

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency:

Insurance Department

(2) Agency Number:

Identification Number:

IRRC Number: 2812

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(3) Short Title:

Education and Training For Applicants and Insurance Producers

(4) PA Code Cite:

31 Pa.Code 39a, §§39a.1-39a.13

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:

Peter J Salvatore, 1326 Strawberry Square, Harrisburg, PA 17120, 717-705-3873, [psalvatore@state.pa.us](mailto:psalvatore@state.pa.us)

Secondary Contact:

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
  - Certification by the Governor
  - Certification by the Attorney General

## Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of this rulemaking is to rescind Chapter 39 and adopt Chapter 39a in order to clarify existing training and education requirements for insurance producers and to establish new training requirements for insurance producers and insurers writing long term care insurance and insurance producers selling flood insurance.

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: 11/15/09
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: 02/28/10
- D. The expected effective date of the final-form regulation: 11/1/10
- E. The date by which compliance with the final-form regulation will be required: 11/1/11
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

(10) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

## Regulatory Analysis Form

### SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The rulemaking is made under the authority of sections 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) relating to the general rulemaking authority of the Department and sections 604-A, 608-A, and 698-A of The Insurance Department Act of 1921 (40 P.S. §§ 310.4, 310.8, and 310.98) relating to license prerequisites, license renewals, and regulations.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Federal law (see the Deficit Reduction Act of 2005, Pub. L. 109-171, 120 Stat. 4, enacted February 8, 2006) requires that any individual who sells a long-term care partnership policy receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. Further, federal law provides that all resident insurance producers who sell federal flood insurance policies shall comply with the minimum training requirements of section 207 of the federal Flood Insurance Reform Act of 2004, Pub. L. 108-264 and basic flood education requirements as outlined at 70 Fed. Reg. 52117 (Sept. 1, 2005) or such later requirements as are published by the Federal Emergency Management Agency (FEMA).

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Since the rulemaking concerns the education of insurance producers and applicants it will benefit the general public by having producers who are knowledgeable in the sale of LTC and Flood insurance.

## Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

N/A

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All insurers or insurance producers who sell and solicit Long-Term Care Insurance and Flood Insurance would be required to comply with the regulation.

## Regulatory Analysis Form

### SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

## Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

N/A

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Notice of proposed rulemaking was published at 39 Pa.B. 7213 (December 26, 2009) with a 30-day comment period. During the 30-day comment period, comments were received from Senator Don White, Primerica Financial Services, the Insurance Federation of Pennsylvania, Inc. (IFP) and the Insurance Agents and Brokers of Pennsylvania (IA&B). During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. The Department considered all the comments during the review of the final form.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No other regulatory schemes were considered. No other nonregulatory alternatives were considered.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

N/A

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states.

## Regulatory Analysis Form

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies?  
If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

N/A

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A



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(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to  
form and legality. Attorney General

By \_\_\_\_\_  
(Deputy Attorney General)

\_\_\_\_\_  
Date of Approval

→ Check if applicable.  
Copy not approved. Objections  
attached.

Copy below is hereby certified to be a true and correct  
copy of a document issued, prescribed or promulgated  
by:

Insurance Department

\_\_\_\_\_  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-240

DATE OF ADOPTION: \_\_\_\_\_

BY: Robert L. Pratter

Robert L. Pratter

Acting Insurance Commissioner  
TITLE: \_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR  
SECRETARY)

Copy below is hereby approved as to form and  
legality. Executive or Independent Agencies

BY: Andrew C. Clark  
NOV - 5 2010

\_\_\_\_\_  
DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)  
(~~CHIEF COUNSEL, INDEPENDENT AGENCY~~)  
(~~STRIKE INAPPLICABLE TITLE~~)

→ Check if applicable. No Attorney General  
approval or objection within 30 days after  
submission.

NOTICE OF FINAL FORM RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 39a Sections 39a.1-39a.13

EDUCATION AND TRAINING FOR APPLICANTS AND INSURANCE  
PRODUCERS.

## PREAMBLE

The Insurance Department (Department) hereby amends Chapter 39 of the Department's regulations (31 Pa. Code Ch. 39) (relating to Continuing Education for Insurance Agents and Brokers) and adopts Chapter 39a (relating to education and training for applicants and insurance producers) to read as set forth in Annex A.

### *Statutory Authority*

The final form regulation is adopted under the authority of sections 205, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) relating to the general rulemaking authority of the Department and sections 604-A, 608-A, and 698-A of The Insurance Department Act of 1921 (40 P.S. §§ 310.4, 310.8, and 310.98) relating to license prerequisites, license renewals, and regulations.

### *Comments and Response*

Notice of proposed rulemaking was published at 39 Pa.B. 7213 (December 26, 2009) with a 30-day comment period. During the 30-day comment period, comments were received from Senator Don White, Primerica Financial Services, the Insurance Federation of Pennsylvania, Inc. (IFP) and the Insurance Agents and Brokers of Pennsylvania (IA&B). During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. The following is a response to those comments.

### *General Comments*

The IRRC had a concern with the differences between the existing regulation and the proposed regulation - Determining if the regulation is in the public interest; Need.

**In response to the IRRC's concern, the Department promulgated this regulation to clarify the new requirements in Act 147 of 2002 (40P.S. §§ 310.4 and 310.8) related to pre-license and continuing education for insurance producers as well as to codify the new training requirements imposed on insurance producers in recent legislation, such as the Long term Care Partnership law and recent updates to the National Flood Insurance Program.**

More specifically, this proposed regulatory package deletes an existing chapter of the Department's regulations entitled "Continuing Education for Insurance Agents and Brokers" and replaces it with a new chapter entitled "Education and Training for Applicants and Insurance Producers." Much of the language contained in the new proposed chapter is very similar to language contained in the existing chapter. The Preamble included with this regulatory package provides a brief summary of each section of the new proposed chapter. However, it does not explain why there are differences between the two versions of the rulemaking. For example, the new definitions section defines terms that are not in the existing regulation and does not include terms that are in the existing regulation. Another example of changes can be found in the sections pertaining to sponsors. Time frames for complying with certain provisions have been

changed, but there is no explanation of why those changes were made. In order for the Commission to determine if the regulation is in the public interest, a more detailed explanation of the changes being proposed is required. The IRRC is asking the Department to provide a more detailed explanation of each section and why some provisions differ from the existing regulation.

**In response to the IRRC's request, the old regulation was based on an outdated statute; therefore, many of the provisions were obsolete and new requirements for training were not established. The Department has found it much easier to eliminate a regulation that is outdated and propose a new regulation in a format that was easier to follow and more consistent with the NAIC model as well as the updated statute.**

IA&B stated the word "chapter" seems too inclusive. It could mean that applicants and insurance producers are exempt from PLE and the examination because of a designation and are also exempt from the training requirements defined later in the same chapter at §39a.9. IA&B would offer to rewrite as follows: "Subject to the exemptions provided under sections 604-A and 608-A of the Act., this chapter applies...."

**The Department considered this comment and provides the following: Section 39(a)3; Applicability, of this chapter states the chapter applies to those applicants and insurance producers not exempt under the statute in sections 604A and 608A; therefore, the Department believes changing the language from chapter to section is not necessary.**

#### **Section 39a.8**

In §39a.8(d)(3), relating to instructors, the IA&B would like to note that requiring the instructor (defined as "an individual") to provide accurate records of successful completion to the course sponsor is burdensome on that individual. In reality, it is the course provider that handles these records. IA&B would like to verify that this provision recognizes that reality, and that the provider can act for the instructor in this case.

**In response to the IA&B's notation, the Department would like to clarify that the instructors have to report course results to the course sponsor (i.e., approved provider) not the Department. The only reason the instructor would need to report this information to the Department or its vendor is if the instructor is the course sponsor.**

In §39a.9, relating to training requirements for insurance producers, the IA&B feels that two items should be clarified for non-resident situations under (a) *"the satisfaction of these training requirements by a nonresident insurance producer in his or her home state shall be deemed to satisfy the training requirements in this Commonwealth."* IA&B would suggest replacing this sentence with the following: *"The satisfaction of the training requirements described in this regulation in any state shall be deemed to satisfy the training requirements in Pennsylvania."* This will account for minor variations in the state programs, and mostly will allow non-resident producers whose home state has not imposed a training requirement to take a course in another state.

**In response to the IA&B's suggestion, the Department considered this comment and added the prescribed reciprocity language to the final form regulation.**

Under (b), in reading the subsections as they apply, the timeline for compliance seems identical for new producers and for producers who already sell LTC, yet they are addressed in two separate paragraphs. Is this intentional?

**In response to the IA&B's suggestion above, the Department's intention here is to distinguish between those individuals licensed on the effective date of this regulation and those licensed subsequent to the effective date. Edits were made to the draft regulation to better clarify the differentiation.**

If a differentiation between new and current producers is intended, as it initially was, IA&B would suggest:

- replacing paragraph (2) with the following:

*"(2) Notwithstanding paragraph (1) of this subsection, an individual who was already licensed as an insurance producer and selling, soliciting or negotiating long-term care insurance on the effective date of this rulemaking will be considered compliant if he or she completes the training course required by paragraph (4) of this subsection within the first full licensing cycle after the effective date of this regulation. "*

**The Department considered this comment and amended the final form language to reflect the one year from effective date language suggested by the IA&B, which also was more consistent with the NAIC model language. Specifically, the Department deleted section 39a.9(2) because it conflicted with the requirements placed on an existing licensee and inserted 39a.9(3)(ii) for individuals licensed after the effective date of this regulation. These changes also involved renumbering.**

**Regarding the IA&B comment on the license cycle, the individual's license cycle is the period until the expiration of the existing license. Any additional time granted the licensee for the conversion to birth month expirations would be then considered the current license cycle, thus, we agreed with the concern of avoiding any confusion and amended the language to one year from effective date of this regulation.**

-Modifying paragraph (4) to remove references to the full licensing cycle.

In the current context of conversion to birth month license renewals, how are we to interpret the reference to a full licensing cycle? Will it be any license renewal that is a full two years? Or will it be something else? It stands to reason that the choice of words could trigger numerous inquiries. Would it not be preferable to select a *set date* such as 12 months from the effective date of this regulation?

**The Department considered this comment from Senator White, the IFP and IRRC as well as the aforementioned comment from the IA&B and amended the final form language to reflect the one year from effective date language, which also was more consistent with the NAIC model language. Also, the individual's license cycle is the period until the expiration of the existing license. Any additional time granted the licensee for the conversion to birth month expirations would be then considered the current license cycle, thus, we agreed with the concern of avoiding any confusion and amended the language to one year from effective date of this regulation.**

(c) The word "verification" was changed to "proof." IA&B would like to verify that a compliance certificate, in paper or electronic form would be sufficient proof that the training was completed.

(d) With regard to flood insurance, IA&B questions how compliance can or will be tracked by the Department? Additionally, what are the penalties for noncompliance?

**In response to IA&B's questions, the Department considered the "proof" terminology as more consistent with the NAIC model and consumer protection for the public that the insurance producer can document proper training. This "proof" can be in the form of the producer's education transcript or the certificate of completion of the course issued by the course sponsor. Any course approved for CE will appear on the producer's education transcript that they can print online at no cost. There is no penalty imposed by the Department for non-compliance. However, the National Flood Insurance Program will not accept applications for flood insurance from non-compliant producers.**

Senator White, the IFP and the IRRC also commented on section 39a.9(b)(4)(i)(A), regarding the Producer Training Requirements. All three commentators stated:

Under Subsection (b)(4)(i)(A), individuals already licensed as insurance producers must complete eight hours of training in the first full two-year licensing cycle after the adoption of the rulemaking. They noted that this differs from the National Association of Insurance Commissioners (NAIC) model rule, on which this rulemaking is partially based. The model rule requires licensed producers to complete eight hours of training within one year of the effective date of the regulation. They wanted to know the reason for the difference between the proposed regulation and NAIC's model rule? Similarly, under Subsection (b)(4)(i)(B), they wanted to know why the Department deviated from the model rule by requiring licensed producers, resident and non-resident, to complete one hour of training related to the Pennsylvania Medical Assistance Program?

**The Department considered Senator White's, the IFP's and the IRRC's comments and made changes to the appropriate sections by deleting the license cycle language, using the one year model language requirement to complete the training, and allowing reciprocity for non-residents on the training required, including the one-hour training specific to Medicaid. The proof of completion can be documented by a transcript of the education courses completed by the producer, and this is available at no cost online. In addition, the original draft did deviate from the NAIC model to be less restrictive to the existing**

insurance producers by allowing more time to complete the training. Thus, this would avoid a marketplace contraction of LTC sales. Again, the Department deleted any reference to requiring non-residents to complete Pennsylvania training, by use of the reciprocity language, which was consistent with the NAIC model and the Gramm-Leach-Bliley Act.

Primerica requested the Department maintain the current minimum two year experience as an insurance producer in the subject matter being taught and not increase this requirement to three years as proposed in section 39a.8(3).

**In response to Primerica's comment, the requirement that a producer be licensed for 3 years before being approved as an instructor is consistent with the NAIC model and all our border states. This will also further enhance the educational value of the course for the students by having a somewhat better prepared instructor.**

#### **Section 39a.9(c), relating to requirements for insurers.**

Senator White, the IFP and the IRRC, all stated Subsection (c)(H) requires insurers writing long-term care insurance to obtain "proof" that an insurance producer has received required training. They wanted to know what type of "proof" would be acceptable. They suggested that a more specific standard be included in the final-form regulation.

**In response to Senator White, the IFP and the IRRC's comments, a transcript will be available or the individual may check online and print to verify compliance. Individuals taking these courses should verify that the course has been applied to their license record. This transcript will also serve as proof for the insurer that the individual producer has complied with the training required by this chapter. The course completion certificate issued by the course sponsor will also suffice as proof of completion.**

Subsection (c)(2) requires certain records to be maintained "in accordance with the Commonwealth's record retention guidelines for insurers as published in the Pennsylvania Bulletin." They stated that this requirement is vague and recommended that the requirements be included in the final-form regulation. In the alternative, they suggested that the Department identify the specific guidelines that need to be followed and when those guidelines will be published in the Pennsylvania Bulletin.

**As stated in the most recent Department notice, 2009-07, the general requirement for retention of records is 7 years from execution of the record, unless otherwise specified in the Guidelines. The 7-year period allows for conclusion of the financial examination process within timeliness standards adopted by the National Association of Insurance Commissioners (NAIC) Financial Regulation Standards and Accreditation Committee. The Guidelines supplement the 7-year general requirement by providing guidance in the establishment of appropriate retention periods for specific types of records for purposes of both financial and market conduct examinations. The Department does not believe that a deviation from these guidelines is necessary and the guidelines do not need to be a separate standard incorporated in the regulation.**

Senator White also stated that during the negotiations with the Pennsylvania Insurance Department (PID) over legislation to establish oversight of the proposed merger between Highmark and Independence Blue Cross, legal counsel for PID was very vocal in expressing concern over enacting legislation which deviated from the NAIC model, citing a fear that Pennsylvania could lose NAIC accreditation. Given those previous concerns, I find it curious that PID is prepared to deviate from the NAIC model in these proposed regulations.

**In response to Senator White's comment, while it appears that there have been deviations, the Department is basing the regulation, not only off of the NAIC model but also off of the Act. In addition, this regulation is substantially similar to the NAIC model. Historically, the NAIC models do not follow the statutory construction that Pennsylvania follows. Therefore, we "Keystonize" the regulations to follow the format utilized by the Pennsylvania Legislative Reference Bureau. For example, the Department changed the section numbering of the NAIC model to conform to the Pennsylvania Code and Bulletin Style Manual. The Department also changed the time required to complete the initial training for LTC producers. The NAIC model required that this training be completed by December 31, 2008, which has passed. The Department allowed one year from the effective date of this regulation to complete the training. These changes were not material.**

The IFP had a concern on Notice 2008-05. They understand that this proposed regulation seeks, in part, to promulgate producer training standards previously outlined in PA Notice 2008-5. That notice, which supersedes an earlier one from January 2008, was published in the April 19, 2008 edition of the Pennsylvania Bulletin. Similar to the proposed regulation, the notice established an initial eight hour training requirement for producers selling long term care partnership policies to be followed by a four hour training requirement every licensing cycle thereafter. The initial eight hours of training was to be met by December 31, 2008. Upon completion of the regulatory review process, we request the Insurance Department clarify via notice to its web site that producers who have already attained the initial eight hours of training under PA Notice 2008-05, including the one hour course on Medicaid, will have met this requirement under the regulation.

**In response to the IFP's concern, the Department may, after the effective date of this regulation, prepare a notice that addresses approved courses related to long-term-care training prior to this regulation that confirm those courses that will have met the requirements of this regulation. However, individuals taking those courses should verify that the course has been applied to their license. A transcript will be available or the individual may check online which will serve as proof of compliance with the training requirement.**

### *Affected Parties*

The rulemaking applies to all applicants and licensed insurance producers and insurers writing long-term care insurance in this Commonwealth.

## ***Fiscal Impact***

### ***State Government***

There will be no increase in cost to the Department due to the adoption of the Chapter 39a.

### ***General Public***

Since the rulemaking concerns the continuing education and pre-licensing of insurance producers and applicants it will have no adverse economic impact on the general public.

### ***Political Subdivisions***

The rulemaking will not impose additional costs on political subdivisions.

### ***Private Sector***

Compliance with the Chapter proposed should not result in increased insurance industry record keeping costs.

### ***Paperwork***

The Department believes that the rulemaking will not impose additional paperwork requirements on licensees. Insurers may see a minimal requirement in the capturing of information not previously required. As this is a Federal requirement, the costs associated with the recordkeeping due to the regulation will be minimal.

## ***Effectiveness/Sunset Date***

The rulemaking will become effective upon the 1<sup>st</sup> of the month two months after the final publication in the Pennsylvania Bulletin. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore no sunset date has been assigned.

## ***Contact person***

Any questions regarding this regulation should be directed to Peter J. Salvatore, Regulatory Coordinator, Bureau of Administration, 1326 Strawberry Square, Harrisburg, PA 17120, phone (717) 787-4429. In addition, questions may be e-mailed to [psalvatore@state.pa.us](mailto:psalvatore@state.pa.us) or faxed to (717) 705-3873.



### ***Regulatory review***

Under section 5(a) of the Regulatory Review Act, (71 P.S. §745.5(a)), the agency submitted a copy of this regulation on November 9, 2010 to the Independent Regulatory Review Commission and to the Chairmen of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

In preparing this final form regulation, the Department considered all comments received from IRRC, the Committees and the public. This final form regulation was (deemed) approved by the House and Senate Committees on \_\_\_\_\_. In accordance with section 5a(d) of the Regulatory Review Act (71 P.S. §745.5a(d)), IRRC met on \_\_\_\_\_ and (deemed) approved the regulation in accordance with section 5a(e) of the Regulatory Review Act (71 P.S. §745.5a(e)).

### ***Findings***

The Commissioner finds that:

- (1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No240) (45 P.S. §§1201 and 1202) and the regulations thereunder, 1 Pa. Code §§7.1 and 7.2.
- (2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

### ***Order***

The Commissioner, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 31 Pa. Code, are amended by adopting §§39a.1-39a.13 to read as set forth in Annex A.
- (b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.
- (c) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) The regulation adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

ROBERT L. PRATTER  
*Acting Insurance Commissioner*

CONTINUATION SHEET FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

Annex A

Title 31. Insurance, Part I. General Provisions. CHAPTER 39. CONTINUING  
EDUCATION FOR INSURANCE AGENTS AND BROKERS. **[Reserved]**

Sec.

39.1.	Definitions. <b>[Reserved]</b>
39.2.	Purpose. <b>[Reserved]</b>
39.3.	Applicability. <b>[Reserved]</b>
39.4.	Exemptions. <b>[Reserved]</b>
39.5.	Administration of continuing education. <b>[Reserved]</b>
39.6.	Sponsors. <b>[Reserved]</b>
39.7.	Courses. <b>[Reserved]</b>
39.8	Credit hours. <b>[Reserved]</b>
39.9.	Instructors. <b>[Reserved]</b>
39.10	Waivers. <b>[Reserved]</b>
39.11.	Penalties for failure to comply with continuing education requirements. <b>[Reserved]</b>
39.12.	Fees. <b>[Reserved]</b>
39.21.	Powers of the Commissioner. <b>[Reserved]</b>
39.22	Advisory Board. <b>[Reserved]</b>

CONTINUATION SHEET FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

Annex A

Title 31. Insurance, Part I. General Provisions. CHAPTER 39a. EDUCATION AND TRAINING FOR APPLICANTS AND INSURANCE PRODUCERS.

Sec.

39a.1.	Definitions.
39a.2.	Purpose.
39a.3.	Applicability.
39a.4.	Administration of education program.
39a.5.	Sponsors.
39a.6.	Courses.
39a.7.	Credit hours.
39a.8	Instructors
39a.9.	Training requirements for insurance producers.
39a.10	Penalties for failure to comply with continuing education.
39a.11.	Fees.
39a.12.	Powers of the Commissioner
39a.13.	Effective Date

§ 39a.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Insurance Department Act of 1921 (40 P. S. §§ 1—326.7).

*Applicant* – An individual applying for an insurance producer license.

*Approved course*—An educational program presented by means of classroom, Internet-based or correspondence study, and certified by the Commissioner as meeting the education requirements of this chapter.

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Credit hour*—Fifty minutes of classroom instruction or the equivalent thereof as determined by the Commissioner.

*Department*—The Pennsylvania Insurance Department.

*Home state*- As defined in section 601-A of the Act (40 P.S. § 310.1)(relating to definitions).

*Instructor*—An individual responsible for teaching an approved course.

*Insurance producer*— A person licensed to sell, solicit or negotiate insurance in accordance with the Act.

*License*—A document issued by the Department authorizing the named recipient to conduct business as an insurance producer in this Commonwealth.

*License period*—The period of time from the issue date to the expiration date stated on the license.

*Nonresident insurance producer*—As defined in section 601-A of the Act (40 P.S. § 310.1)(relating to definitions).

*Partnership policies*- Long-term care insurance policies that satisfy the requirements set forth in the Federal Deficit Reduction Act of 2005, Pub. L. 109-171, 42 U.S.C. 1396(p).

*Person*—An individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, beneficial association and any other legal entity engaged in the business of insurance, including insurance producers and adjusters. The term also includes health care plans as defined in 40 Pa.C.S. Chapters 61, 63, 65 and 67 and in the Health Maintenance Organization Act (40 P. S. §§ 1551—1568). For purposes of this chapter, health care plans, fraternal benefit societies and beneficial societies shall be deemed to be engaged in the business of insurance.

*Preexamination education* – Education required by section 604-A of the Act (40 P.S. § 310.4)(relating to license prerequisites).

*Program Administrator*—The person or entity responsible for the administration of the education contract.

*Resident insurance producer*—A licensed insurance producer whose home state is Pennsylvania.

*Sponsor*—A person offering or providing an approved course.

*Student*—An individual subject to the preexamination education requirements of section 604-A of the Act (40 P.S. § 310.4)(relating to license prerequisites) or a licensed insurance producer subject to the continuing education requirements of section 608-A of the Act (40 P.S. § 310.8)(relating to license renewals).

*Successfully complete*—To complete an approved course for which a valid course completion certificate is issued.

§ 39a.2. Purpose.

The purpose of this chapter is to implement the provisions of sections 604-A and 608-A of the Act (40 P.S. §§ 310.4, 310.8)(relating to license prerequisites and to license renewals) by establishing requirements and standards for education, including continuing and preexamination education, and training programs for applicants and insurance producers.

§ 39a.3. Applicability.

This chapter applies to applicants and insurance producers not exempt under sections 604-A or 608-A of the Act (40 P.S. §§ 310.4, 310.8)(relating to license prerequisites and to license renewals).

§ 39a.4. Administration of education program.

(a) The Commissioner may contract with a competent individual or entity to serve as Program Administrator. The responsibilities of the Program Administrator shall include:

- (1) Reviewing sponsor qualifications.
- (2) Course content.
- (3) Credit hour assignment for continuing education courses.
- (4) Recording successful course completion by insurance producers.
- (5) Performing other services deemed appropriate by the Commissioner.

(b) The Commissioner will:

- (1) Approve sponsor registration, courses and assignment of credit hours to approved courses.
- (2) Approve only sponsors who are of sound business reputation and who agree to satisfy the requirements of this chapter pertaining to sponsors.
- (3) Approve only courses that impart substantive and procedural knowledge relating to the insurance field, satisfying the standards contained in § 39a.6 (relating to courses).
- (4) Approve only instructors that satisfy the standards contained in § 39a.8 (relating to instructors).
- (5) Show no bias or favoritism towards a sponsor, course or instructor.

§ 39a.5. Sponsors.

(a) A sponsor shall apply for registration on an application approved by the Commissioner.

(b) A sponsor shall have the responsibility to:

- (1) Ensure compliance with this chapter.
- (2) Provide the name, address, phone number and email, if available, of a contact person for each course submitted for approval.
- (3) Provide the name of each course instructor and identify the qualifications under § 39a.8 (relating to instructors) that the instructor satisfies.
- (4) Notify the Commissioner of a change in information on applications for course or instructor approval.
- (5) Ensure that the course provides students with current and accurate information.
- (6) Provide students with the following information in writing:
  - (i) The course title.
  - (ii) The date, time, location and applicable website when the course is offered.
  - (iii) The name, address and telephone number of a contact person for each course.
  - (iv) A general outline of the subject matter being covered.
  - (v) Other information the sponsor believes may benefit the students.
  - (vi) A form for requesting continuing education credits, if applicable.
- (7) Provide a textbook or a detailed outline of the subject matter being taught.
- (8) Supervise and evaluate courses and instructors.
- (9) Investigate complaints relating to courses or instructors.
- (10) Maintain accurate records of courses offered, instructors, student attendance and student course completion for at least 4 years from the date of course completion.
- (11) Within 30 calendar days of a student's successful completion of a course, provide the student with a course completion certificate on a form or in a format approved by the Commissioner.
- (12) Notify the Commissioner or the Program Administrator in a prescribed format of students who have successfully completed a course within 10 business days of the date of course completion.

(c) A sponsor shall comply with the following advertising standards:

(1) A sponsor may not advertise a course that has not been approved by the Department, unless the advertisement prominently displays or announces pending review and approval by the Department.

(2) A sponsor shall prominently display or announce in an advertisement the number of credit hours assigned to the course and the fee for the course.

(3) A sponsor may not engage in false, misleading or deceptive advertising.

(d) A sponsor shall comply with the following standards regarding fees:

(1) If a course is cancelled for any reason, the sponsor shall refund the fees within 30 calendar days of cancellation or, at the request of the student, shall transfer the fee to another course offered by the sponsor.

(2) A sponsor shall provide each student with a written refund policy that addresses withdrawal from or failure to complete a course.

(e) A sponsor that is a business or organization employing students or having students as members may not require the students to attend the sponsor's course to receive continuing education credit.

(f) A sponsor shall apply for course approval on an application approved by the Commissioner. The application shall be filed at least 60 calendar days before the date the course is to begin. The sponsor shall be notified within 30 calendar days of the date of the receipt of an application regarding approval or disapproval. If the Commissioner or Program Administrator requests additional information to review the application, the sponsor will have up to 30 calendar days to comply with the request. If the request is not satisfied within the 30 calendar-day period, the application shall be considered voluntarily withdrawn.

§ 39a.6. Courses.

(a) The Commissioner will approve only courses that contribute directly to the professional insurance competence or ethics of students. Accordingly, the following types of courses will not be approved:

(1) A course in mechanical, office or business skills, including typing, speed reading, or the use of calculators or other machines or equipment.

(2) A course in sales promotion.

(3) A course in motivation, salesmanship, stress management, time management, psychology, communication or writing.



(4) A course relating solely to office management, client relations or improving the operation of the student's business.

(b) Courses or programs shall meet the Commissioner's standards for an approved course. Examples of courses or programs which may meet the Commissioner's standards for an approved course are:

(1) Any part of the Life Underwriter Training Council (LUTC) course curriculum.

(2) Any part of the American College diploma curriculum for Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC) or Master in Financial Sciences (MSFS) or courses required for or to maintain CLU, ChFC or MSFS designations.

(3) Any part of the College of Financial Planning diploma curriculum for Certified Financial Planning (CFP) program.

(4) Any part of the Insurance Institute of America curriculum.

(5) Any part of the American Institute for Chartered Property Casualty Underwriters (CPCU) program.

(6) Any part of the National Association of Health Underwriters Registered Health Underwriter (RHU) program.

(7) Any part of the Health Insurance Association of America (HIAA) program.

(8) Any part of the Academy of Life Underwriting Education Council curriculum (LUEC) program.

(9) Any part of the Certified Insurance Counselor (CIC) program.

(10) Any part of the Blue Cross and Blue Shield Association's Certified Health Consultant curriculum.

(11) Any part of the Accredited Adviser in Insurance (AAI) designation program.

(12) Any part of the CISR curriculum.

§ 39a.7. Credit hours.

(a) The Commissioner will determine the number of credit hours to be assigned to each approved course. Credit hours will not include time spent on meals, breaks or other activities unrelated to the course.

(b) To receive credit, a student shall complete the requirements of an approved course, including attendance or participation (if other than a classroom format) and examination requirements. For courses that do not use a classroom format, a course will not be considered completed until the sponsor has received all necessary forms from a student. Students should further advise the sponsor to file with the Department a verification of course completion for the student to obtain credit.

(c) A student may not earn credit for attending a subsequent offering of the same course within the same licensing period.

(d) The instructor of an approved course shall earn twice the number of approved credit hours for that course. The instructor may not earn credit for instructing a subsequent offering of the same course within the same licensing period.

(e) A student shall maintain records of credits earned for at least the two most recently completed licensing periods in addition to the current licensing period.

(f) Pre-examination education credits shall be valid for a period of one year from the date the course is successfully completed.

§ 39a.8. Instructors.

(a) The instructor shall possess one or more of the following qualifications:

(1) A minimum of 3 years experience in the subject matter being taught.

(2) A degree in the subject matter being taught.

(3) A minimum of 3 years experience as an insurance producer in the subject matter being taught.

(b) An individual shall be prohibited from acting as an instructor if a suspension or revocation of that individual's license is in force.

(c) Individuals desiring to become instructors shall provide the sponsor with a signed statement verifying that the individual has not committed any act prohibited by section 611-A of the Act (40 P.S. § 310.11)(relating to prohibited acts) and specifying the individual's qualifications to be an instructor.

(d) Instructors shall have the responsibility to:

(1) Comply with this chapter.

(2) Provide students with current and accurate information.

(3) Provide accurate records of successful course completion to the course sponsor within 10 working days.

§ 39a.9. Training requirements for insurance producers.

(a) *General information.* The training requirements of this section are separate and independent from the continuing education requirements for insurance producers. The satisfaction of these training requirements by a nonresident insurance producer in his or her home state shall be deemed to satisfy the training requirements in this Commonwealth.

(b) *Long term care insurance.*

(1) An individual may not sell, solicit or negotiate long-term care insurance unless the individual is licensed as an insurance producer for accident and health and has completed the training required by paragraph (4) of this subsection.

(2) An individual already licensed as an insurance producer and selling, soliciting or negotiating long-term care insurance on the effective date of this rulemaking may not continue to sell, solicit or negotiate long-term care insurance unless the individual has completed the training required by paragraph (4).

(3) A course designed to provide the training required by paragraph (4) may be approved as a continuing education course under section 602-A(a)(2) of the Act (40 P.S. §310.2(a)(2))(relating to powers and duties of Department).

(4) The following apply to the training required by this paragraph:

(i) An insurance producer, LICENSED AS OF THE EFFECTIVE DATE OF THIS REGULATION:

(A) Who has not yet completed an eight-hour training course on long-term care insurance shall complete no less than eight hours of training ~~in~~ WITHIN the first ~~full licensing cycle~~ YEAR after the effective date of this regulation.

(B) That sells, solicits or negotiates long-term care Partnership policies shall complete, as part of the eight hour requirement, a one-hour, ~~Pennsylvania-specific~~ course related to the ~~Pennsylvania~~ Medical Assistance Program (Medicaid) prior to engaging in any marketing activity of Partnership policies.

(ii) AN INDIVIDUAL, LICENSED AFTER THE EFFECTIVE DATE OF THIS REGULATION, TO SELL LONG-TERM CARE INSURANCE, SHALL COMPLETE THE REQUIREMENTS IN SUBPARAGRAPHS A AND B PRIOR TO SELLING, SOLICITING OR NEGOTIATING LONG-TERM CARE INSURANCE.

(III) The ongoing training requirement shall be no less than four hours in every subsequent 24 month licensing cycle.

(5) The training required by paragraph (4) shall consist of topics related to long-term care insurance, long-term care services and, if applicable, qualified state long-term care insurance Partnership policies, including:

- (i) State and federal regulations and requirements and the relationship between qualified state long-term care insurance Partnership policies and other public and private coverage of long-term care services, including Medicaid.
- (ii) Available long-term services and providers.
- (iii) Changes or improvements in long-term care services or providers.
- (iv) Alternatives to the purchase of private long-term care insurance.
- (v) The effect of inflation on benefits and the importance of inflation protection.
- (vi) Consumer suitability standards and guidelines.

(6) Completion of the training required by paragraph 4 shall be sufficient to demonstrate evidence of an insurance producer's understanding of the topic specified in subparagraph 5(i).

(7) The training required by paragraph 4 shall not include training that is product-specific to any insurer or company or include any sales or marketing information, materials or training, other than those required by state and federal law.

(c) *Requirements for insurers.* Insurers writing long-term care insurance in this Commonwealth shall do all of the following:

(1) Obtain proof that an insurance producer has received the training required by this section before permitting the insurance producer to sell, solicit or negotiate the insurer's long-term care insurance products.

(2) Maintain records as required by paragraph (1) in accordance with the Commonwealth's record retention guidelines for insurers as published in the *Pennsylvania Bulletin*;

(3) Make the information required by paragraph (1) available to the Commissioner upon request.

(d) *Flood insurance.* All resident insurance producers who sell federal flood insurance policies shall comply with the minimum training requirements of section 207 of the federal Flood Insurance Reform Act of 2004, Pub.L.108-264 and basic flood education as outlined at 70 Fed. Reg. 52117 (Sept. 1, 2005) or such later requirements as are published by the Federal Emergency Management Agency (FEMA).

(e) *Compliance.* An insurance producer or insurer that fails to comply with the requirements of this section shall be subject to penalties in accordance with sections 611-A(2) and 691-A of the Act (40 P.S. §§ 310.11(2), 310.91)(relating to prohibited acts and enforcement by the Department).

§ 39a.10. Penalties for failure to comply with continuing education requirements.

(a) An insurance producer shall be notified by the Department, 90 days prior to the expiration date stated on his license, of the number of credit hours needed to satisfy the continuing education requirements.

(b) Failure to comply with continuing education requirements by the expiration date of the license shall be deemed a voluntary termination of the insurance producer's license.

§ 39a.11. Fees.

(a) Fees will be established under subsection (b) or (c) for initial approval of a sponsor, approval of each course offered by a sponsor and for the sponsor's reporting of course completion. Following initial approval, each sponsor and the sponsor's course will be subject to recertification every 2 years for which fees shall be established. Fees will reflect the administrative costs for the education program.

(b) If the Department administers the education program, the fees described in subsection (a) will be established by regulation.

(c) If the Department contracts with a competent individual or entity to serve as Program Administrator in accordance with § 39a.4 (relating to administration of continuing education) for the administration of the continuing education program, the fees described in subsection (a) will be established by contract pursuant to the standards and procedures established for procurement of contractual services by Commonwealth agencies and will be published as a notice in the *Pennsylvania Bulletin*.

§ 39a.12. Powers of the Commissioner.

(a) The Commissioner may disqualify or deny, suspend or revoke the approval of a sponsor, instructor, course or program of courses if the sponsor, instructor, course or program of courses is not in compliance with this chapter.

(b) If the Commissioner determines that a student has knowingly falsified an education report, has misrepresented any fact, information or material submitted to the Commissioner under the education requirements, or has knowingly submitted a false education report, the Commissioner may suspend or revoke the individual's license and impose appropriate civil penalties under section 691-A of the Act (40 P.S. §310.91) (relating to enforcement by the Department).

(c) The Commissioner may audit, monitor and review courses with or without notice to the sponsor.

§ 39a.13. Effective Date.

This regulation shall take effect on \_\_\_\_\_ (Editor's note: The regulation should take effect the 1<sup>st</sup> of the month, two months after the final publication in the *Pennsylvania Bulletin*.)

Comments on the regulation listed below have been received from the following:

<i>Reg #</i>	<i>Regulation Title</i>	<i>Date Received</i>	<i>Date Sent To Cmtes/IRRC</i>
<i>11-240</i>	<i>Education &amp; Training for Insurance Producers</i>		
<hr/>			
<i>Mr. Jason F. Ernest, Esq</i>		<i>1/22/2009</i>	<i>1/26/2010</i>
<i>Vice President - Advocacy</i>			
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<i>Senator Donald C. White</i>		<i>1/22/2010</i>	<i>1/26/2010</i>
<i>Majority Chairman</i>			
<i>Senate Banking and Insurance Committee</i>			
<i>286 Main Capitol</i>			
<i>Harrisburg, PA 17120-3041</i>	<i>Letter Co-Author</i>		
<i>Phone (717) 787-8724</i>	<i>EMail dwhite@pasen.gov</i>		



November 9, 2010

Mr. Kim Kaufman  
Executive Director  
Independent Regulatory Review Comm.  
333 Market Street  
Harrisburg, PA 17101

Re: Insurance Department Final Regulation No. 11-240, Education and Training for Applicants and Insurance Producers

Dear Mr. Kaufman:

Pursuant to Section 5a(c) of the Regulatory Review Act, enclosed for your information and review is final regulation 31 Pa. Code, Chapter 39a, Education and Training for Applicants and Insurance Producers.

The purpose of this rulemaking is to rescind Chapter 39 and adopt Chapter 39a in order to clarify existing training and education requirements for insurance producers and to establish new training requirements for insurance producers and insurers writing long term care insurance and insurance producers selling flood insurance.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in black ink that reads "Peter J. Salvatore". The signature is written in a cursive, flowing style.

Peter J. Salvatore  
Regulatory Coordinator



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-240

SUBJECT: EDUCATION AND TRAINING FOR APPLICANTS AND INSURANCE PRODUCERS

AGENCY: DEPARTMENT OF INSURANCE

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

RECEIVED  
IRRC  
2010 NOV -9 P 1:52

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
11-9-10	<i>Bonnie Bruckert</i>	HOUSE COMMITTEE ON INSURANCE
11-9-10	<i>Linda Lopez</i>	MAJORITY CHAIRMAN <u>REP. ANTHONY DELUCA</u>
11-9-10	<i>L. J. Sullivan</i>	SENATE COMMITTEE ON BANKING & INSURANCE
X 11-9-10	<i>Mark Powers</i>	MAJORITY CHAIRMAN <u>SEN. DONALD C. WHITE</u>
11/9/10	<i>K. Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU