

**INDEPENDENT REGULATORY REVIEW COMMISSION  
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, June 20, 2019  
14<sup>th</sup> Floor Conference Room  
333 Market Street

**I. CALL OF THE MEETING**

The June 20, 2019 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:03 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present:      George D. Bedwick, Chairman  
   Murray Ufberg, Esq.  
   Dennis A. Watson, Esq.

Telephone:                      John F. Mizner, Esq., Vice Chairman  
   W. Russell Faber

**II. APPROVAL OF THE MAY 16, 2019 PUBLIC MEETING MINUTES**

Chairman Bedwick asked for a motion for approval of the May 16, 2019 public meeting minutes, as submitted. Commissioner Ufberg made the motion and Commissioner Watson seconded, and the motion passed 5-0.

**III. NEW BUSINESS**

**A.      DEEMED APPROVED**

**1.   No. 3210 Department of Agriculture #2-191: Milk Sanitation**

**B.      ACTION ITEMS**

**1.   No. 3207 Insurance Department #11-257: Privacy of Consumer Financial Information**

Scott Schalles, Regulatory Analyst, explained that the regulation amends Chapter 146a of the Insurance Department (Department) regulations, which govern the treatment of nonpublic personal financial information by various licensees of the Department. He further explained that it is based on a National Association of Insurance Commissioners (NAIC) model regulation. Mr. Schalles reported NAIC recently amended the model regulation to incorporate federal statutory changes. He said the purpose of this rulemaking is to update Chapter 146a to be consistent with the model regulation. According to Mr. Schalles, 52 states and territories have adopted or partially adopted the original model regulation, and at this time two states have adopted while at

least five states have started the process of adopting the amendments to the model regulation. He reported both the House and Senate standing committees have deemed the regulation approved and the Commission has not received any comments on the regulation.

Jodi Frantz, Deputy Chief Counsel, Christopher Monahan, Deputy Commissioner for the Office of Market Regulation, and John Lacek, Counsel, Insurance Department, were present to answer any questions.

Mr. Monahan told the Commissioners the regulation stems from the adoption of the NAIC model privacy opt-out regulation. He explained the NAIC adopted the model opt-out regulation in response to changes that occurred at the federal level. Mr. Monahan indicated that under the federal Gramm-Leach-Bliley Act, financial institutions are required to send their customers a federal privacy notice. He further explained that this notice describes how and with whom the financial institution shares customer information, and allows the customer to opt out or refuse to allow a financial institution to share information. Mr. Monahan stated that until recently, these notices were required to be sent annually, even if nothing had changed regarding the institution's privacy or information sharing policy. He reported the federal government has since changed these regulatory requirements, which has done away with the annual privacy notice requirement. According to Mr. Monahan, under current law, a financial institution must send an initial privacy notice and subsequent notices only if the financial institution's privacy policy has changed.

Mr. Monahan stated that this regulation aims to place insurers in Pennsylvania on the same footing as financial institutions that are already in compliance with the new federal privacy notice requirements. He said that, consistent with the changes at the federal level, this regulation would require insurers to send consumers an initial privacy notice, which would allow the insured to opt out of the sharing of private information, and the insurer would only be required to send a subsequent privacy notice if the insurer changes its privacy policy. Mr. Monahan told the Commissioners, "It is the Department's belief that adopting this regulation would ease the administrative burden of insurers doing business in the commonwealth as well as eliminate consumer confusion which is caused by receiving a new notice every year."

Commissioner Watson asked about Capital Blue Cross's concern about whether they could use their existing form. Mr. Lacek responded that the current form is in compliance. He explained that the goal of the regulation is to encourage insurers to adopt a uniform national standard. According to Mr. Lacek, their current notice would be perfectly fine to use for a period of one year until the safe harbor rule sunsets. He stated that after that point, their form would continue to be permissible to use, however, they could no longer take advantage of the safe harbor provision. According to Mr. Lacek, the idea is to encourage Capital Blue Cross to move to the model form, but noted the current form as written complies with the law and would still be in compliance after the adoption of the regulation.

Commissioner Faber made a motion for approval. Commissioner Ufberg seconded, and the motion passed 5-0.

## **2. No. 3222 State Board of Nursing #16A-5142: Fees; General Revisions**

Corinne Brandt, Regulatory Analyst, explained that this rulemaking amends several sections of the State Board of Nursing (Board) regulations to increase application fees and biennial renewal fees; add additional fees for licensed practical nurses (LPNs), registered nurses (RNs), certified registered nurse practitioners (CRNPs), licensed dietician-nutritionists (LDNs), and clinical nurse specialists (CNSs); and provide for new and increased fees relating to approval of nursing education programs. She said the proposal specifically amends 68 fees, consisting of 39 existing application fees, six existing biennial renewal fees, and 23 new and increased fees for education-related services. Ms. Brandt reported that no public comment was received on the final regulation and the standing House and Senate standing committees deemed the regulation approved.

Judith Pachter Schulder, Counsel, State Board of Nursing, Cynthia Montgomery, Deputy Chief Counsel, and Kimberly Mattis, Director, Bureau of Finance and Operations, Department of State, were present to answer any questions.

Ms. Schulder pointed out there are application fees that have not changed since the 1980s. She stated that in the past it had been the Bureau of Professional and Occupational Affairs' (BPOA) policy to lump all of the fees in the biennial renewal, which is why application service fees were not being increased. Ms. Schulder commented, "There is thought . . . that really isn't fair and should not be borne out by the entire licensing community." She noted the Board has a deficit of over \$9 million and without the next renewal cohort that comes up in October, the deficit will increase by another \$4 million. Ms. Schulder told the Commissioners the deficit is due to the operations of the Board and because the fees have not changed for so long. She provided an overview of some of the reasons for the increased costs for the Board. Ms. Schulder reported that when the Board originally thought about increasing its biennial renewal fees, they came up with three across-the-board fees that were not really sufficient to deal with the deficit and charged everybody the same amount. She said the Board decided they did not want to do it that way. Ms. Schulder explained the Board's rationale for increasing the fees by varying amounts. She reported the Board has expenses of approximately \$31 million per year and revenue is about \$24 million per year, which means an operating deficit of approximately \$7 million per year.

Commissioner Faber expressed concern with the licensing boards waiting ten years to adjust the various fees. Ms. Schulder explained that BPOA and the boards in the past have gone out ten years and have used the formula of biennial renewal rather than the individual application fee. She said BPOA and the other boards understand that it is not the Commissioners' desire for the boards and BPOA to go out that long and three renewal periods (six years) would be better. Ms. Montgomery said she spoke with Ian Harlow, Commissioner, BPOA, yesterday and that going forward the boards will be looking out three renewal periods and will consider graduated fee increases to make it possible for the licensees to plan for the increases.

Commissioner Ufberg commented that he does not understand why there cannot be a program in place which assures there is a greater assessment of where the boards are to better identify when it is appropriate for fee increases.

Commissioner Watson, Vice Chairman Mizner and Chairman Bedwick all said they share the same concerns expressed by Commissioners Faber and Ufberg.

Commissioner Faber made a motion for approval. Commissioner Ufberg seconded, and the motion passed 5-0.

#### **IV. OTHER BUSINESS**

##### **Approval of Vouchers**

Commissioner Watson made motions to approve vouchers and expenses for the period April 19, 2019 through May 16, 2019. Commissioner Ufberg seconded, and the motions passed 5-0.

#### **V. DATE AND PLACE OF SUBSEQUENT MEETING**

Chairman Bedwick announced the next public meeting is scheduled for Thursday, July 18, 2019, at 10:00 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg.

#### **VI. EXECUTIVE SESSION ANNOUNCEMENTS**

Chairman Bedwick announced that no executive session would be held.

#### **VII. ADJOURNMENT**

Chairman Bedwick announced the meeting adjourned at 10:36 a.m.