

PROPOSED RULEMAKING

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CHS. 91 AND 93]

Administration and State Correctional Institutions and Facilities

The Department of Corrections (Department) gives public notice of its intention to amend Chapters 91 and 93 (relating to administration; and State correctional institutions and facilities) to read as set forth in Annex A. The Department is acting under the authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186). The regulations will be amended to revise outdated material and delete regulations that do not affect the public.

Purpose

The proposal will amend Chapter 91 to update the sections on definitions, agency purpose, reception of inmates and catchment areas.

Chapter 93 will be amended to revise the sections on inmate correspondence to provide for additional security. The section on purchases for inmates by family and friends will be updated. The section on incoming publications has been merged into the provision on inmate correspondence. The section on religious activities will be updated. The section on telephone calls will be updated to refer to the monitoring of calls. The section on housing will be updated.

Compliance with Executive Order 1996-1

The Department has reviewed the proposed amendments and has considered their purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, "Regulatory Review and Promulgation." The proposed amendments comply with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

Since the Department currently operates the State prison system in accordance with the proposed amendments, it does not expect this proposed rulemaking to have a fiscal impact on, or to create new paperwork requirements for, the Commonwealth, its political subdivisions or the private sector.

Effective Date

The proposed amendments shall be effective upon closure of the public comment period, the regulatory review process and final publication in the *Pennsylvania Bulletin*.

Public Comment Period and Contract Person

Written comments concerning the Department's proposed amendments may be submitted to John S. Shaffer, Ph.D., Deputy Secretary for Administration, 2520 Lisburn Road, P. O. Box 598, Camp Hill, PA 17001-0598. Written comments must be received within 30 days of the publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 1, 2001, the Department submit-

ted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Judiciary Committees (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion of the proposed amendments. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

JEFFREY A. BEARD, Ph.D.,
Secretary

Fiscal Note: 19-5. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 91. ADMINISTRATION

§ 91.1. Definitions.

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

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[**Bureau**—**Pennsylvania Bureau of Corrections.**]

Center [**Director**] **director**—[**Administrator**] **An administrator** of a [**Bureau**] **Department** of [**Correction Community Service Center**] **Corrections community corrections center.**

Community [**Service Center**] **corrections center**—A minimum security community-oriented facility operated by the [**Bureau**] **Department** for the purpose of facilitating special programs.

Department—**The Pennsylvania Department of Corrections.**

Diagnostic and [**Classification Center**] **classification center**—Facilities [**located within some State correction institutions,**] designated to receive and classify persons who have been [**transferred**] **committed** to the custody of the [**Bureau**] **Department.**

Facility—**A State correctional institution, regional correctional facility, motivational boot camp or community corrections center operated by the Department.**

Facility manager—**The chief administrator of a facility, that is, the superintendent of a State correctional institution or regional correctional facil-**

ity, the commander of a motivational boot camp or the director of a community corrections center.

Inmate—A person committed to the custody of or confined by the [Bureau] Department.

Institution—A correctional institution or regional correctional facility operated by the [Bureau] Department.

Regional [Director] director—The supervisor of a group of [Community Service] corrections centers.

Resident—An inmate assigned to a [Community Service Center] community corrections center.

Secretary—The Secretary of the Department.

Special housing—Housing units, that is, restricted housing units, special management units, long term segregation units, and the like, operated to house inmates who require specialized services or a higher level of supervision than provided in general population housing.

[*Superintendent*—The chief administrator of an institution.]

§ 91.2. Agency purpose.

It is the goal of the [Bureau] Department to [operate its institutions and programs so as to provide protection to the community, a safe and humane environment and opportunities for rehabilitation for the inmates] protect the public by confining persons committed to the Department's custody in safe, secure facilities, and to provide opportunities for inmates to acquire the skills and values necessary to become productive law-abiding citizens, while respecting the rights of crime victims.

§ 91.3. Reception and discharge of inmates.

The [Bureau] Department will accept and confine those persons committed to it under lawful court orders which conform to 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement) when sufficient information has been provided to the Department as required by law. The [agency] Department will also accept persons for whom transfer from other correctional facilities has been approved in advance by the [Commissioner or Deputy Commissioner of Correction] Secretary or a designee, under [the act of March 24, 1921 (P. L. 48, No. 23) (61 P. S. §§ 78—80) and] section 1 of the act of July 11, 1923 (P. L. 1044, No. 425) (61 P. S. § [§] 72[—77a]). Commitments and transfers will be accepted only during the [institution's] facility's normal business hours, except upon prior approval of the [Superintendent] facility manager or [his] a designee. Orders discharging an inmate will be processed during normal business hours. To ensure compliance with State and Federal laws, it is expected that the discharge process can be completed within 2 business days.

§ 91.4. Catchment areas.

(a) Male inmates committed to the custody of the [Bureau from the following counties] Department will be received at [the Eastern Diagnostic and Classification Center at the State Correctional Institution at Graterford: Berks, Bucks, Carbon,

Chester, Delaware, Lackawanna, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Schuylkill and Wayne] facilities designated as diagnostic and classification centers for male inmates.

(b) [Male inmates committed to the custody of the Bureau from the following counties will be received at the Central Diagnostic and Classification Center at the State Correctional Institution at Camp Hill: Adams, Bedford, Blair, Bradford, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Lycoming, Mifflin, Montour, Northumberland, Perry, Snyder, Sullivan, Susquehanna, Tioga, Union, Wyoming and York.

(c) Male inmates committed to the custody of the Bureau to serve terms of confinement less than 2 years from the following counties will be received at the State Regional Correctional Facility at Greensburg: Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Washington and Westmoreland.

(d) Male inmates committed to the custody of the Bureau to serve terms of confinement less than 2 years from the following counties will be received at the State Regional Correctional Facility at Mercer: Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Potter, Venango and Warren.

(e) Male inmates committed to the Bureau from the following counties will be received at the Western Diagnostic and Classification Center at the State Correctional Institution at Pittsburgh: Allegheny, Armstrong, Beaver, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington and Westmoreland.

(f) Female inmates committed to the [Bureau] Department will be received at [the State Correctional Institution at Muncy] facilities designated as diagnostic and classification centers for female inmates.

[(g)] (c) The [Deputy Commissioner] Secretary of [Correction] the Department or a designee may grant permission for an inmate to be received at [an institution] a facility other than as designated in subsections (a) [—(f)] and (b).

CHAPTER 93. STATE CORRECTIONAL INSTITUTIONS AND FACILITIES

§ 93.1. General.

Those portions of some Department [of Corrections] directives and policy statements which concern the interaction of Department [of Corrections] inmates and employes with the community at large are published. Full text of the directives and other policy statements are maintained in [the institutions and] all Department facilities.

§ 93.2. Inmate correspondence.

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(b) *Restrictions.* The following restrictions apply:

(1) Correspondence with inmates of other institutions, former inmates, probationers or victims of the criminal acts of the inmate will not be permitted except upon special approval of the [**Superintendent**] facility manager.

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(5) Mail addressed to an inmate organization will not be accepted unless the facility manager has approved the organization and the name of a member of the organization is included in the address.

(c) *Incoming mail.* [**Incoming**] All incoming mail, regardless of its source, will be opened and examined for contraband in the Department's mailroom or other area designated by the Department for the examination of mail. Sealed written communications that will be opened in the presence of an inmate shall be permitted only as set forth in this subsection. All sealed documents shall be opened in the presence of the inmate and searched for contraband. Documents retained by an inmate may be searched at any time. They may be read only as set forth in subsection (e).

(1) Due to prison security concerns, limited staff resources and the availability of alternate means for confidential communications, the Department will permit sealed mail to be opened in the presence of an inmate only in the following very limited circumstances:

(i) An attorney unable to communicate through alternate means for confidential communication may hand deliver, in person or by an authorized representative of the attorney's office, documents for sealed delivery to an inmate.

(A) The person making the delivery shall present valid identification and information sufficient to allow institution staff to verify that the person is an attorney or is an authorized representative of an attorney.

(B) The person shall present unsealed and unbound documents to designated staff at any State correctional institution during times established by the institution.

(C) The documents will be inspected in the presence of the person presenting them.

(D) The documents will then be sealed in that person's presence for delivery to an inmate at any State correctional facility or designated community corrections center.

(ii) Under no circumstance will documents filed in a court of public record (other than those sealed by court order) be required to be opened in the presence of an inmate. Any court may direct by specific order that court documents sealed from public disclosure be delivered sealed to an inmate to be opened in the inmate's presence. A court representative shall deliver the sealed documents to any State correctional facility along with a copy of the specific order requiring sealed delivery.

(2) Money orders, certified checks, cash or other negotiable instruments will be recorded indicating the nature of the receipt, the sender, the amount received and the date. Personal checks, unless certified, will be returned to the sender. The institution is not responsible for cash sent through the mails. [**Letters containing contraband may be held for further inspection and dispo-**

sition.] Coins, currency or other negotiable [**instrument**] **instruments** concealed in correspondence [**is**] **are** contraband and will be confiscated. Confiscated coins and currency will be deposited in the [**Inmate's**] **Inmate** General Welfare Fund.

(3) Other contraband will be returned to the sender, destroyed or transferred to appropriate criminal justice agencies.

(d) [*Privileged correspondence.*

(1) Correspondence, which is marked as described in paragraph (2) to and from the following persons should be considered privileged:

(i) Elected or appointed Federal, State or local officials.

(ii) Attorneys.

(2) Privileged correspondence must be clearly marked on the envelope with the name and title of the privileged correspondent. Only privileged correspondence may be so marked.

(3) Privileged correspondence received by the institution will be delivered to the housing unit officer and opened by the officer in the presence of the addressee. It will be checked for contraband.]

Outgoing mail. Sealed outgoing mail from an inmate will not be searched except as set forth in subsection (g).

(e) *Scrutiny of correspondence.*

(1) The institution may read [**nonprivileged**] mail upon the approval of the [**Superintendent when there is a reason to believe that security may be impaired or that this section is being abused**] facility manager.

(2) The institution may read [**privileged**] sealed mail, only upon the written order of the [**Superintendent**] facility manager with the written approval of the [**Commissioner of Corrections**] Secretary when there is reason to believe that there is a threat to institutional security[,] or criminal activity[, or this section is being abused] .

[(3) An item of correspondence which appears to violate this section may be reviewed by the institution. The inmate and the sender, in cases where the inmate is not the sender, will be notified when the letter is rejected. The letter may be held for at least 7 days after mailing of the notification to permit reasonable opportunity to protest the decision. If the letter is rejected, it will be returned to the sender.]

(f) [*Inmate organizations.* Mail addressed to an inmate organization will not be accepted unless the organization has been approved by the Superintendent and the name of a member of the organization is included in the address.]

Incoming publications.

(1) Publications for the purpose of this section will include printed material that is circulated for the public conveying information or to which the inmate is entitled under State or Federal law or the Pennsylvania or United States Constitutions. This includes newspapers, magazines, hardcover or pa-

perback books, pamphlets and newsletters, regardless of postal rate, that are not specifically intended for the purpose of advertising or selling merchandise.

(2) All publications must be received from the original source. Covers of hardbound publications may be damaged through examination or removed where inspection of the cover is deemed necessary and no reasonable available alternative form of inspection is adequate.

(3) Magazines shall be mailed directly from the original source. Small letter sized pamphlets may be received in regular correspondence.

(4) Newspapers shall be mailed directly to the facility.

(5) Publications that are sent directly from a publisher, bookstore, book club, distributor or department store will usually be deemed to have come from the original source.

(6) Newsletters and other mail from recognized nonprofit religious and charitable organizations, when addressed to an individual inmate shall be delivered to the inmate even if mailed at less than first or second-class mail rates.

(7) Publications containing potentially prohibited material or questionable content, or both, will be reviewed by the facility's incoming publication review committee (IPRC).

(8) The IPRC will determine whether written or printed material is a publication.

(9) Publications may be disapproved that contain information regarding the manufacture of explosives, incendiaries, weapons, escape devices or other contraband, instructions regarding the ingredients or manufacture of poisons, drugs or intoxicating beverages, writings which advocate violence, insurrection or guerrilla warfare against the government or any of its institutions or which create a clear and present danger within the context of the correctional facility, materials which are obscene as that term is defined in 18 Pa.C.S. § 5903 (relating to obscene and other sexual materials and performances) or which portray, depict or expressly encourage violent or assaultive sexual conduct or involuntary deviant sexual conduct, or writings which advocate, assist or are evidence of criminal activity or misconduct.

(10) Under 18 Pa.C.S. § 5903, the Department will not distribute any obscene or explicit sexual materials to inmates under 18 years of age.

(11) A publication will not be prohibited solely on the basis that the publication is critical of penal institutions in general, of a particular institution, of a particular institutional staff member, of an official of the Department, or of a correctional or penological practice in this or any other jurisdiction.

(12) The criteria in paragraph (9) should not be interpreted so broadly as to require disapproval of recognized textbooks in chemistry, physics or the social sciences.

(13) The inmate shall have the right to appeal any decision of the IPRC in accordance with Department policy for inmate grievances.

(14) An inmate may receive more than one copy of any publication only with the approval of the IPRC.

(g) An item of correspondence which appears to violate this section may be reviewed by the institution. The inmate and the sender, in cases where the inmate is not the sender, will be notified when the letter is rejected. The letter may be held for at least 7 days after mailing of the notification to permit reasonable opportunity to protest the decision. If the letter is rejected, it will be returned to the sender.

§ 93.4. Purchase for inmates by family and friends.

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(b) Only those items listed on the current [**Catalogue Purchase list**] **Approved Master Commissary List** may be purchased from approved vendors. Copies of the list are provided to the inmates. Publications may be purchased via this procedure, but shall be subject to § [**93.5**] **93.2** (relating to [**incoming publications**] **inmate correspondence**).

(c) Purchases shall be approved prior to the time the item is received by the institution. [**Requests for outside purchase shall be initiated by the inmate and reviewed by a designated institution official who will approve or disapprove the request.**]

(d) Only those items shipped directly from the vendor to the [**institution**] facility will be accepted [, except typewriters which may be brought from home.

(e) Packages delivered to the institution will be opened and searched. Any contraband contained in any package will be confiscated. Coins, currency or other negotiable instrument concealed in any package received by the institution is contraband. Confiscated coins, currency or other negotiable instruments will be deposited in the Inmates' General Welfare Fund.

(f) Packages shall be addressed to the inmate. The address on the package shall contain the inmate's name, institution number and the full name of the correctional institution in which the inmate is confined. The institution may decline to accept any package which is not appropriately addressed.

(g) The institution retains the right to require identification of the purchaser of any outside purchase and to decline to accept any package which does not conform to this section.

(h)] (e) Unauthorized or disapproved items will be returned to the sender at the expense of the inmate or purchaser.

§ 93.5. [Incoming publications] (Reserved).

[(a) Publications for the purpose of this section will include newspapers, magazines, hard or paperback books, newsletters, pamphlets or any other written or printed material which is distributed for the purpose of conveying information. Printed or written material which is to be used solely for identification purposes will be considered property and will be subject to all Department of Corrections rules governing property. Correspondence will be governed by § 93.2 (relating to inmate correspondence).

(b) Publications, except newspapers and magazines, may be received from any source. Covers of

hard-bound publications received from sources other than the original source, may be damaged or removed where inspection of the cover is deemed necessary and no reasonably available alternative form of inspection is adequate. Magazines and newspapers must be mailed directly from the original source. Small letter-sized pamphlets may be received in regular correspondence from family members, friends or religious advisors. Publications which are sent directly from a publisher, bookstore, distributor or department store will usually be deemed to have come from the original source.

(c) The Publications Review Committee will determine whether written or printed material is a publication and will rule on publications within 10 days after the material is received. Property will be forwarded to the property officer for processing. The committee will communicate its decision to the inmate, with reasons if a publication is disapproved.

(d) Receipt of publications may be disapproved when the publications contain the following:

(1) Information regarding the manufacture of explosives, incendiaries, weapons, escape devices or other contraband.

(2) Instructions regarding the ingredients or manufacture of poisons, drugs or intoxicating beverages.

(3) Writings which advocate violence, insurrection or guerrilla warfare against the government or any of its institutions or which create a clear and present danger within the context of the correctional institution.

(4) Materials which portray, depict or expressly encourage violent or assaultive sexual conduct or involuntary deviant sexual conduct.

(5) Writings which advocate, assist or are evidence of criminal activity or institution misconduct.

(e) A publication will not be prohibited solely on the basis that the publication is critical of penal institutions in general, of a particular institution, of a particular institutional staff member, of an official of the Department of Corrections, or of a correctional or penological practice in this or any other jurisdiction.

(f) The criteria set forth in subsection (d) should not be interpreted so broadly as to require disapproval of recognized textbooks in chemistry, physics or the social sciences.

(g) An inmate may receive more than one copy of a publication only with special approval of the Publications Review Committee.]

§ 93.6. Religious activities.

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(c) [**Recognition**] **Accommodation** of faiths. Requests for [**recognition by**] **accommodation** of faiths [**that are not well known**] will be handled as follows:

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(2) Information material will be forwarded to the Director of Chaplaincy Services for the Department [of

Corrections who will determine the authenticity and religious needs of the group] for evaluation.

§ 93.7. Telephone calls.

(a) Inmates may make [collect] phone calls [to persons who are willing to accept the charges subject to institution rules and procedures] in accordance with applicable law. All phone calls, except confidential communications between attorneys and inmates shall be subject to monitoring in accordance with 18 Pa.C.S. Chapter 57 (relating to wiretapping and electronic surveillance).

(b) Phone calls to inmates will be permitted only if approved in advance by the [Superintendent] facility manager or [his] a designee.

§ 93.11. Housing.

(a) [No] An inmate [shall] does not have a right to be housed in a particular [institution] facility or in a particular area within [an institution] a facility.

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[Pa.B. Doc. No. 01-821. Filed for public inspection May 11, 2001, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Reference Libraries; Facsimile Machines

The State Board of Pharmacy (Board) proposes to amend §§ 27.14 and 27.20 (relating to supplies; and facsimile machines) to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed amendments are authorized under sections 4(j) and 6(k)(1) and (9) of the Pharmacy Act (act) (63 P. S. §§ 390-4(j) and 390-6(k)(1)–(9)).

Background and Purpose

Section 27.14(c)(14) currently requires a pharmacy to have an adequate reference library including two or more of the latest editions of references specifically listed in the section. The proposed rulemaking would amend this section by eliminating the specific list of references and replacing it with language that would allow a pharmacy to maintain references which are more appropriate and necessary to that pharmacy's area of practice.

Section 27.20 allows a pharmacist to fill a prescription for a Schedule II controlled substance that is received on a facsimile machine under certain conditions. The Board regulation is consistent with Federal law with one exception. Federal law allows a pharmacist to use the facsimile prescription as the original prescription for all Schedule II controlled substances for hospice patients, while the Board regulation only allows a facsimile prescription as the original prescription for "injectable" Schedule II con-

trolled substances for hospice patients. This rulemaking package is the Board's attempt to make its regulation consistent with Federal law.

Description of Proposed Amendments

Proposed § 47.14(c)(14) would remove a list of 13 references from which the current regulation now requires the pharmacy to maintain the latest editions of at least two references. The proposal recognizes that many references are not listed in the regulation which are more comprehensive or pertinent, or both, to current pharmacy practice or more appropriate to a pharmacy's particular area of practice. It is not uncommon that pharmacies maintain the two required references which then sit on the shelf unused because the pharmacy actually uses other references that are more applicable to current pharmacy practice as well as more consistent with that pharmacy's scope of practice. The proposed rulemaking would eliminate the unnecessary cost of maintaining required, yet unused, references while allowing and encouraging pharmacies to maintain references more pertinent to their area of practice.

Current § 27.20 allows a pharmacist to fill a prescription for a Schedule II controlled substance received on a facsimile machine if the original prescription signed by the medical practitioner is presented to the pharmacist for review prior to the actual dispensing of the controlled substance. There are two exceptions to the requirement that the original prescription be presented prior to dispensing; 1) prescriptions for "injectable" Schedule II controlled substances which will be administered in a patient's home or hospice; and 2) prescriptions for Schedule II controlled substances for residents of a long-term care facility.

The Board regulation is consistent with Federal law regarding the "injectable only" prescriptions for Schedule II controlled substances administered in a patient's home, and prescriptions for Schedule II controlled substances for residents of long-term care facilities. It is inconsistent with Federal law regarding hospice patients. Federal law allows facsimile prescriptions as the original prescription for all Schedule II controlled substances for patients in hospice facilities. On July 25, 2000, the Drug Enforcement Agency published an Interim Rule in the *Federal Register* that interprets the Federal regulation's language regarding "patients residing in a hospice facility" to include all hospice patients regardless of the setting. The Board regulation only allows facsimile prescriptions for "injectable" Schedule II controlled substances for patients in a hospice.

The Board's rulemaking package would amend the Board regulation to allow facsimile prescriptions as original prescriptions for all Schedule II controlled substances for all hospice patients, making it consistent with Federal law and the Drug Enforcement Administration Interim Rule.

Hospice patients are often homebound and it may be difficult for them or their caregivers to obtain a written prescription. At this time, a faxed prescription for an injectable Schedule II controlled substance may serve as the original pharmacy record. However, a faxed prescription for an oral or topical Schedule II controlled substance for a hospice patient can be dispensed to the hospice patient only after the original prescription is presented to the pharmacist for review. If the faxed copy of hospice patients' oral and topical Schedule II controlled substance

prescriptions could serve as the original pharmacy record, the burden on hospice patients and their care-givers would be reduced by eliminating the need to first obtain a written prescription from the medical practitioner for the oral and topical Schedule II controlled substances. Increased access for hospice patients to oral and topical Schedule II medications, especially during emergencies, allows for faster pain relief and an increase in the quality of life.

Compliance with Executive Order 1996-1

In compliance with Executive Order 1996-1, the Board extended the invitation to the following boards, associations and interested licensees and educators to preliminarily review and comment on the Board's draft regulatory proposal:

Lonna H. Donaghue, Executive Director, Pennsylvania Hospice Network; Joan Harrold, MD, Medical Director, Hospice of Lancaster County; Coleen Kayden, R.Ph., Lancaster, PA; Denise Harris, Director, Pinnacle Health Hospice; Richard B. Greene, R.Ph., Hospice Pharmacia; Michael P. Cinque, R.Ph.; Terri Bostick, iScribe; Pennsylvania Pharmacists Association; Pennsylvania Society of Health-Systems Pharmacists.

The Board reviewed and considered all comments and suggestions received by these and other interested parties during the regulatory development process.

Fiscal Impact and Paperwork Requirements

These proposed amendments would have no fiscal impact or additional paperwork requirements on the Commonwealth. Additionally, the proposed amendments should not necessitate any legal, accounting or reporting requirements on the regulated community.

Sunset Date

The Board reviews the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 2, 2001, the Board submitted a copy of proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House of Professional Licensure Committee and the Senate Consumer Protection and Licensure Committee. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a detailed regulatory analysis form prepared by the agency in compliance with Executive Order 1996-1 "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days after the close of the Committees' review. The notification shall specify that regulatory review criteria which have not been met by the portion. The Regulatory Review Act specifies detailed procedures for review prior to publication of the regulations by the Board, the General Assembly and the Governor of objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Eva Cheney, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30

days of publication of this proposed rulemaking. Please reference No. 16A-549 when submitting comments.

MICHAEL A. PODGURSKI,
Chairperson

Fiscal Note: 16A-549. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD PHARMACY

§ 27.14. Supplies.

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(c) A pharmacy shall maintain at least the following equipment and supplies:

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(14) [An adequate reference library including two or more of the latest editions of the following, including current supplements:

(i) *The United States Pharmacopeia, The National Formulary.*

(ii) *Physicians Desk Reference.*

(iii) *Drug Facts and Comparisons.*

(iv) *Remington's Pharmaceutical Sciences.*

(v) *The United States Dispensatory.*

(vi) *Physicians' Generix.*

(vii) *USPDI (United States Pharmacopeia Dispensing Information).*

(viii) *American Drug Index.*

(ix) *Goodman and Gilman's Pharmacological Basis of Therapeutics.*

(x) *AHFS Drug Information.*

(xi) *Radiological Health Handbook.*

(xii) *The Merk Index: An Encyclopedia of Chemicals, Drugs, and Biologicals.*

(xiii) *Martindale: The Extra Pharmacopeia.*]

An adequate reference library which meets the following standards:

(i) A pharmacy shall maintain an adequate reference library to enable it to prepare and dispense prescriptions properly, consistent with its scope of practice.

(ii) A pharmacy shall maintain a library of reference sources appropriate to the type of pharmacy

practice at that particular location. A pharmacy shall include in the pharmacy's library current material regarding the technical, clinical and professional aspects of practice with emphasis in the area in which the pharmacy specializes.

(iii) A pharmacy shall maintain a library containing reference sources that:

(A) Enable the pharmacist to compound medications in a safe and effective manner.

(B) List the possible drug interactions and possible adverse effects of medications dispensed by the pharmacy.

(C) List the therapeutic equivalents for medications.

(D) List the therapeutic usage and dosages of medications dispensed by the pharmacy.

(E) Provide guidelines for the counseling of patients.

(iv) A pharmacy that specializes in nuclear or parenteral prescriptions may limit the library it maintains under subparagraph (ii) relating to the pharmacy's own specialization.

(v) A pharmacy shall maintain the latest editions including current supplements of each of its reference sources.

§ 27.20. Facsimile machines.

(a) *Schedule II controlled substances.*

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(2) There are [two] three exceptions to the requirement that the pharmacist review the original of the prescription received on a facsimile machine before dispensing a Schedule II controlled substance. A pharmacist may fill and dispense a prescription for a Schedule II controlled substance which was received on a facsimile machine and may use the facsimile as the original pharmacy record of the following:

(i) A prescription for a Schedule II controlled narcotic substance which will be administered to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion in the patient's home [or hospice].

* * * * *

(iii) A prescription for a Schedule II controlled narcotic substance which will be administered to a hospice patient.

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[Pa.B. Doc. No. 01-822. Filed for public inspection May 11, 2001, 9:00 a.m.]