

# RULES AND REGULATIONS

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

[31 PA. CODE CH. 118]

#### Discounting Medical Malpractice Loss Reserves

The Insurance Department (Department) amends §§ 118.1—118.3 and 118.6 to read as set forth in Annex A.

##### *Statutory Authority*

The final-form regulations are adopted under the authority of The Insurance Company Law of 1921 (40 P. S. §§ 341—999); The Insurance Department Act of 1921 (40 P. S. §§ 1—321); and sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412).

##### *Comments and Response*

Notice of proposed rulemaking was published at 30 Pa.B. 5452 (October 21, 2000) with a 30-day comment period. During the 30-day comment period, comments were received from the Insurance Federation of Pennsylvania, Inc. (IFP) and the Professional Insurance Agents Association of Pennsylvania, Maryland and Delaware, Inc. (PIA). During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. The following is a response to those comments.

The IFP supported the rulemaking in its entirety.

The PIA asked how the Department determined that there would be no fiscal impact. The PIA stated that it “[...] has always understood that the Insurance Department has always considered investment income during the rate review process. This consideration thus reduced the ultimate rate approved in accordance with the statutory duty of the Commissioner that rates shall not be excessive, inadequate or unfairly discriminatory. By not permitting loss reserve discounting, it would appear that rates would have to be adjusted upward to compensate in the rate filing. That would produce higher premium rates to policyholders, however, PIA recognizes that premiums may remain the same.”

Discounting is a reflection of investment income, which is one of many factors that insurance companies take into account in setting rates. As a practical matter, the impact that discounting may have on insurance rates is a reflection of a particular insurance company's financial strength. Currently, only one medical malpractice insurer in this Commonwealth discounts its loss reserves. Because this company has more than adequate reserves, the Department does not anticipate that its rates will increase due to the amendments to this rulemaking. The rulemaking should have no impact on the rates of the remaining insurance carriers writing medical malpractice insurance in this Commonwealth because none of these insurers discount their loss reserves.

In addition, in January 2001, the National Association of Insurance Commissioners (NAIC) required all insurers to follow the recently adopted Statements of Statutory Accounting Principles which specifically prohibits discounting of medical malpractice loss reserves unless the insurer is allowed to do so by statute or regulation or requests a permitted practice from the Department (or other regulatory authority). Also, the majority of the

states do not permit discounting of loss reserves. Therefore, the phase out of discounting in this Commonwealth should have minimal impact on the insurers engaged in the business of medical malpractice insurance.

During its 30-day review, IRRC questioned whether an effective date of January 1, 2001, was feasible, as that date has passed. IRRC recommended that § 118.3(4) (relating to restrictions on discounting loss reserves) be revised to apply prospectively to policies that become effective after the date of publication of the final-form regulations.

The Department has no objection to making this change. Discounting will not be permitted on policies sold on or after the effective date of the rulemaking.

##### *Affected Parties*

The rulemaking applies to insurance companies doing the business of medical malpractice insurance in this Commonwealth.

##### *Fiscal Impact*

###### *State Government*

There will be no increase in cost to the Department due to the amendment of Chapter 118 (relating to discounting of medical malpractice loss reserves).

###### *General Public*

There will be no fiscal impact to the public.

###### *Political Subdivisions*

The rulemaking will not impose additional costs on political subdivisions.

###### *Private Sector*

The rulemaking will not impose additional costs of insurance companies doing the business of medical malpractice insurance in this Commonwealth.

###### *Paperwork*

The adoption of the rulemaking will not impose additional paperwork on the Department or the insurance industry.

##### *Effectiveness/Sunset Date*

This rulemaking becomes effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

##### *Contact person*

Any questions regarding this rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. In addition, questions may be e-mailed to [psalvatore@state.pa.us](mailto:psalvatore@state.pa.us) or faxed to (717) 772-1969.

##### *Regulatory review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 11, 2000, the Department submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 5452, to IRRC and to the Chairpersons of the Senate Committee on Banking and Insurance and the House Committee on Insurance. In addition to the submitted regulations, the Department has provided IRRC 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."

Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received. A copy of that material is available to the public upon request.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), on May 9, 2001, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 17, 2001, and approved the final-form regulations.

*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, No. 240) (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 Chapter 118, are amended by amending §§ 118.1, 118.2 and 118.6 to read as set forth at 30 Pa.B. 5452 and by amending § 118.3 to read as set forth in Annex A.

(b) The Commissioner shall submit this order, 30 Pa.B. 5452 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, 30 Pa.B. 5452 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The regulations adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

DIANE KOKEN,  
*Insurance Commissioner*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 2855 (June 2, 2001).)*

**Fiscal Note:** Fiscal Note 11-197 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 31. INSURANCE**

**PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE**

**CHAPTER 118. DISCOUNTING OF MEDICAL MALPRACTICE LOSS RESERVES**

**§ 118.3. Restrictions on discounting loss reserves.**

The discounting of loss reserves is subject to the following limitations:

(1) The loss reserves discounted to present value in accordance with this chapter may not be less than those required in accordance with section 313(b) of the act (40 P.S. § 112(b)).

(2) The maximum rate of interest which an insurer may assume for purposes of discounting is 6%.

(3) An insurer may request an exception to the maximum interest rate in paragraph (2) if the insurer can demonstrate to the satisfaction of the Commissioner that its investment yield justifies a higher interest rate assumption. The Commissioner may require the insurer to submit additional documentation to support its request for approval of a higher interest rate assumption. The Commissioner will act upon requests for exceptions made under this paragraph within 90 days of the date the request is received by the Insurance Department.

(4) An insurer may not discount loss reserves or loss adjustment expense reserves for policies with an effective date on or after June 16, 2001.

(5) An insurer may not discount loss reserves or loss adjustment expense reserves after December 31, 2010.

[Pa.B. Doc. No. 01-1039. Filed for public inspection June 15, 2001, 9:00 a.m.]

**Title 37—LAW**  
**CORONERS' EDUCATION BOARD**  
**[37 PA. CODE CH. 199]**  
**Education Requirements**

The Coroners' Education Board (Board), housed in the Office of Attorney General, by this order adds Chapter 199 (relating to duties of the Coroners' Education Board) to read as set forth in Annex A.

This final-form rulemaking was adopted by the Board at its meetings of January 18, 2000, and November 13, 2000.

*A. Effective Date*

The rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

*B. Contact Persons*

For further information contact Andrea F. McKenna, Senior Deputy Attorney General, Office of Attorney General, 16th floor, Strawberry Square, Harrisburg, PA 17120, (717) 787-6348, amckenna@attorneygeneral.gov or Gwendolyn Casey, Executive Secretary to the Board, Office of Attorney General, 16th Floor Strawberry Square, Harrisburg, PA 17120, (717) 783-3014, gcasey@attorneygeneral.gov.

*C. Statutory Authority*

Final-form rulemaking is made under authority of section 6 of the act of March 2, 1988 (P.L. 108, No. 22), known as the Coroners' Education Board Law (act) (16 P.S. §§ 9525.1—9525.6) and section 506 of The Administrative Code of 1929 (71 P.S. § 186).

*D. Background and Purpose*

Final-form rulemaking regulates the duties of the Board as set forth in the act to establish a course of instruction to be given to coroners upon first election to office as well as to chief deputy and full-time deputy coroners; to prepare a written examination to be given at the conclusion of each course of instruction; to set tuition for the courses of instruction; to determine what offerings qualify for continuing education requirements; and to notify the Governor or the appropriate county officer

when persons bound by the act fail to comply with its requirements. These regulations codify existing practices of the Board in carrying out its statutory duties and provides guidance to coroners and their deputies bound by the provisions of the act.

*E. Summary of Regulatory Requirements and Changes from Proposed to Final*

These regulations are the first regulations promulgated by the Coroners' Education Board. A summary of final-form rulemaking follows:

**Chapter 199. Coroners' Education Board**

*§ 199.1. Definitions.*

Section 199.1 defines terms used as words of art in the regulation of activities of the Board, namely: "act," "Basic Education Course," "Board," "certification," "continuing education," "examination," "full-time deputy coroner" and "just-cause." Final rulemaking enlarges the definition of "just-cause" to include "instances when an appointment to fill a vacancy occurs prior to the next scheduled Basic Education Course."

*§ 199.2. Application of act.*

Section 191.2 designates the categories of persons subject to final-form rulemaking.

*§ 199.3. Appeal.*

Final-form rulemaking adds § 199.3 which provides that any coroner or deputy aggrieved by a decision of the Board has the right to appeal according to the provisions of 2 Pa.C.S. (relating to administrative law and procedure).

*§ 199.11. Board chairperson.*

This provision establishes how and when the Board will elect its chairperson.

*§ 199.12. Temporary chairperson.*

This section describes the process by which a temporary chairperson will be selected in the absence of the elected chairperson. Final-form rulemaking clarifies that approval of the temporary chairperson is to come from the majority of Board members present.

*§ 199.13. Meeting schedule.*

This provision establishes the number of times the Board will meet yearly and establishes when the annual meeting schedule is to be set.

*§ 199.21. General requirement.*

This section addresses the general requirement that all newly elected coroners and newly appointed chief deputy and full-time deputy coroners attend the Basic Education Course and pass the examination. The provision states the minimum hours of necessary instruction and the time period in which the course will be offered. Final-form rulemaking includes forensic autopsies among the topics to be included in the course of instruction.

*§ 199.22. Basic education costs.*

Final-form rulemaking adds this section which provides that costs for persons statutorily required to take the Basic Education Course are to be the minimum necessary to pay the cost of instruction and room and board and provides that a list of cost options to attend the Basic Education Course will be available from the Board.

*§ 199.23. Postponement for just cause.*

This provision establishes that the Board has discretion to determine "just cause" to postpone compliance with any

provision of the act and establishes a time frame in which persons seeking an exemption must initiate contact with the Board.

*§ 199.24. Exemption for qualified forensic pathologist.*

This section derives from the Board's statutory authority to exempt persons otherwise required to take the Basic Education Course who are physicians licensed and certified in this Commonwealth. This section sets standards for the exercise of that discretion.

*§ 199.25. Exemptions for licensed professionals.*

Taking into account comments informally received from several physicians, and mindful of the specialized knowledge required of coroners, this section establishes that no licensed professionals, other than licensed forensic pathologists, will be eligible for exemption from the requirement of attending the Basic Education Course and passing the examination.

*§ 199.26. Eligibility for certification.*

This provision addresses certification of both persons statutorily required to take the Basic Education Course and pass the examination and also persons who take the course voluntarily.

*§ 199.27. Failure of coroner to attend Basic Education Course or to pass examination.*

This section addresses the notification duties of the Board when a person elected for the first time to the office of coroner fails to attend the Basic Education Course and pass the examination.

*§ 199.28. Failure of chief deputy coroner to attend Basic Education Course or to pass examination.*

This provision addresses the notification duties of the Board when a chief deputy coroner or full-time deputy coroner fails to attend the Basic Education Course and pass the examination.

*§ 199.30. Appointments made more than 6 months prior to course.*

Section 199.30 addresses procedures for meeting basic education requirements when an appointment to office is made more than 6 months prior to the next scheduled Basic Education Course.

*§ 199.41. Continuing education.*

This provision relates to the statutory requirement that coroners and deputy coroners obtain a minimum of 8 hours of continuing education credits in each calendar year. Final-form rulemaking adds the directive that continuing education credits be obtained in subject areas relevant to the statutorily defined duties of coroners and deputy coroners.

*§ 199.42. Approval of course for continuing education credit.*

This provision sets out the procedure for obtaining approval of a course for continuing education. Final-form rulemaking changes the period in which approval must be sought from 3 months to 90 days prior to the date of instruction.

*§ 199.43. Standards for course approval.*

This provision establishes criteria to guide the Board's discretion in approving a course for continuing education credit. Final-form rulemaking enlarges the criteria to include the education and relevant experience of the course instructors.

*§ 199.44. Approval by chairperson.*

Section 199.30 permits the Board chairperson to approve courses for continuing education credit subject to ratification by the Board.

*§ 199.45. Board ratification.*

This section sets the schedule for Board ratification of the chairperson's approval of courses for continuing education credit.

*§ 199.46. Approval by simple majority.*

This provision establishes the required vote for Board ratification of the chairperson's approval of a course for continuing education credit.

*§ 199.47. Unit of credit.*

This section establishes what shall constitute a unit of continuing education credit, limits the amount of continuing education credit available in a calendar year and establishes the amount of continuing education credit to be awarded teachers of approved course.

*§ 199.48. Continuing education for persons required to attend Basic Education Course.*

This provision states continuing education requirements for newly elected and newly appointed coroners and deputies.

*§ 199.49. Failure of coroner to meet continuing education requirements.*

This provision states the action the Board will take in the event a coroner fails to meet yearly continuing education requirements.

*§ 199.50. Failure of chief deputy coroner or full-time deputy coroner to meet continuing education requirements.*

This provision states the action the Board will take in the event a chief deputy coroner or full-time deputy coroner fails to meet yearly continuing education requirements.

*§ 199.61. Statement of Board approval.*

This section informs continuing education course providers of the need to have written authorization from the Board prior to representing that the course offering is approved for continuing education credit.

*§ 199.62. Verification of attendance.*

The provision informs continuing education providers of recordkeeping and notification requirements.

*§ 199.63. Certificate of attendance.*

This section informs continuing education providers of requirements pertaining to certification of attendance.

*§ 199.64. Notification to Board.*

This provision informs course providers of requirements for reporting attendance and credit hours to the Board.

*§ 199.71. Board to maintain current list.*

This section states the Board will keep a list of all currently elected coroners.

*§ 199.72. Coroners' duty to notify Board.*

This provision informs coroners of the responsibility to provide the Board with the names of all chief deputy coroners and full-time deputy coroners. Final-form rulemaking clarifies the relevant time period from 1 month to 30 days following appointment.

*F. Summary of Comments and Responses on the Proposed Rulemaking*

Notice of proposed rulemaking was published at 30 Pa.B. 1871 (April 8, 2000). The Board received comments only from the Independent Regulatory Review Commission (IRRC). All comments submitted to the Board were duly considered and final-form rulemaking was revised to reflect the commentators' suggestions or objections on the proposal.

The comments from IRRC focused on clarity of language and consistency with the enabling statutes. The Board, accordingly, made revisions in final-form rulemaking to comport with the suggestions of the IRRC. For example, the Board has stricken proposed regulations attaching consequences for failure to meet continuing education requirements. This change was made because there is no statutory authority for creating those consequences. At the direction of IRRC, the Board has amended the proposed rulemaking to include notice of the right to appeal decisions of the Board in accordance with provisions of administrative law and procedure. In response to IRRC, the Board has included a proposed regulation pertaining to the fixing of costs for those statutorily required to attend the Basic Education Course. Final-form rulemaking includes a more complete description of the Basic Education Course curriculum and more fully describes standards for Board approval of courses proposed for continuing education credit.

*G. Benefits and Costs*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

(1) Benefits

In accordance with Executive Order 1996-1, Regulatory Review and Promulgation, the Board has sought in final-form rulemaking to achieve clear and, where possible, nontechnical language. Likewise, it has reviewed and incorporated comments pertaining to clarity of language received from IRRC.

(2) Costs

The final-form regulations will impose no new costs on the private sector or on the general public.

(3) Paperwork requirements

The final-form regulations will not increase paperwork.

*H. Sunset Date*

The Board will continuously monitor its regulations; therefore, no sunset date has been assigned.

*I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 23, 2000, the Board submitted a copy of the proposed rulemaking, published at 30 Pa.B. 1871, to IRRC, the Office of the Budget and the chairpersons of the House and Senate Judiciary Committees. The Board was later notified that the Senate Local Government Committee was to receive proposed rulemaking, in lieu of the Senate Judiciary Committee. This oversight was corrected and a copy of the proposed rulemaking submitted to the Chairperson of the Senate Local Government Committee in June of 2000. IRRC issued written comments on July 24, 2000.

In preparing the final-form regulations, the Board has considered all comments received from the Commission. Neither the Committees nor the public provided comments on the proposed rulemaking.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on April 23, 2001, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 3, 2001, and approved the final-form regulations.

#### J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments to proposed rulemaking do not enlarge the purpose of proposed rulemaking published at 30 Pa. B. 1871.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part C of this order.

#### L. Order of the Board

The Board, acting under its authorizing statutes, orders that:

(a) Title 37 of the Pa. Code is amended by adding §§ 199.1—199.3, 199.11—199.13, 199.21—199.30, 199.41—199.51, 199.61—199.64, 199.71 and 199.72 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The order shall take effect on publication in the *Pennsylvania Bulletin*.

MICHAEL L. NORRIS,  
*Chairperson*

*(Editor's Note: The addition of §§ 199.3 and 199.30 were not included in the proposal at 30 Pa.B. 1871. The proposal to add § 199.52 has been withdrawn by the Board. For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 2641 (May 19, 2001).)*

**Fiscal Note:** Fiscal Note 59-7 remains valid for the final adoption of the subject regulations.

### Annex A

#### TITLE 37. LAW

#### PART III. AGENCIES AND OFFICES

#### Subpart M. CORONERS

#### CHAPTER 199. CORONERS' EDUCATION BOARD

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##### GENERAL

#### § 199.1. Definitions.

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

*Act*—The Act of March 2, 1988 (P. L. No. 1988—No. 22) (16 P. S. §§ 9525.1—9525.6).

*Basic Education Course*—The course of instruction required by the act to be given to coroners upon their first election to office and to chief deputy and full-time deputy coroners upon first being appointed to either position.

*Board*—The Coroners' Education Board.

*Certification*—Documentation issued by the Board indicating that education requirements have been met.

*Continuing education*—Yearly educational requirement mandated by the act for every coroner, chief deputy coroner and full-time deputy coroner.

*Examination*—The examination given at the conclusion of the Basic Education Course.

*Full-time deputy coroner*—An individual employed by a county and deemed by the county to be "full-time."

*Just-cause*—Instances such as job-related emergencies, or illness or accident suffered either by a person required to meet basic education requirements or by the person's immediate family or death of the person's immediate family member or in instances when an appointment to fill a vacancy occurs prior to the next scheduled Basic Education Course.

#### § 199.2. Application of act.

Coroners, whether elected or appointed, and their deputies, are subject to the act and of this chapter.

#### § 199.3. Appeal procedure.

A coroner or deputy aggrieved by a decision of the Board has the right to appeal in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

**ORGANIZATION OF THE BOARD**

**§ 199.11. Board chairperson.**

The Board members will elect a chairperson from the Board membership at the first regularly scheduled meeting of each calendar year.

**§ 199.12. Temporary chairperson.**

In the absence of the elected chairperson, any Board member may serve as temporary chairperson with the approval of a majority of the Board members present.

**§ 199.13. Meeting schedule.**

The Board will schedule six regular meetings per calendar year, with the meeting dates to be set at or before the first meeting of the calendar year.

**BASIC EDUCATION COURSE**

**§ 199.21. General requirement.**

Newly elected coroners and newly appointed chief deputy and full-time deputy coroners shall attend the Basic Education Course and pass the examination.

(1) The Basic Education Course is a minimum 32 hours of instruction given between the date of each municipal election and December 31 of that year.

(2) The course of instruction includes subjects such as crime-scene investigation, toxicology, forensic autopsies and the legal duties of a coroner.

(3) A written examination is given at the conclusion of the course.

**§ 199.22. Basic Education Course costs.**

Costs for those persons statutorily required to attend the Basic Education Course will be the minimum necessary to pay the cost of instruction, required course materials, and room and board. A schedule of cost options to attend the Basic Education Course is available upon request from the Board.

**§ 199.23. Postponement for just cause.**

The determination of the existence of just cause to postpone attendance at the Basic Education Course or completion of the examination, will be at the discretion of the Board. The person seeking exemption bears the responsibility of initiating contact with the Board within 30 days of the event asserted as just cause.

**§ 199.24. Exemption for qualified forensic pathologists.**

A licensed forensic pathologist may be exempt from the requirement of attendance at the Basic Education Course and completion of the examination. The Board will determine eligibility for exemption. Based upon the applicant's ability to demonstrate active, current involvement in the practice of forensic pathology.

**§ 199.25. Exemptions for licensed professionals.**

With the exception of § 199.23 (relating to exemption for qualified forensic pathologists), exemptions from § 199.21 (relating to general requirement) will not be permitted based on other types of education or experience.

**§ 199.26. Eligibility for certification.**

(a) Persons statutorily required to complete the Basic Education Course and pass the examination will receive certification from the Board.

(b) Persons who are under no statutory obligation to do so, but who register for the Basic Education Course

through the Board, attend the course and pass the examination, will receive certification. Certification will expire in 1 year, unless the Board receives evidence of yearly compliance with the continuing education requirement.

**§ 199.27. Failure of coroner to attend Basic Education Course or to pass examination.**

When a person elected for the first time to the office of coroner fails to attend the Basic Education Course and pass the examination, the Board will notify the Governor, following the last Board meeting of the year, unless the Board has postponed compliance for just cause.

**§ 199.28. Failure of chief deputy coroner or full-time deputy coroner to attend Basic Education Course or pass examination.**

When a chief deputy coroner or full-time deputy coroner fails to attend the Basic Education Course and pass the examination, the Board will notify the coroner of the appropriate county and the county commissioners or county executive, as appropriate, unless the Board has postponed compliance for just cause. The notification will be made in writing within 30 days of the examination.

**§ 199.29. Appointees' basic education requirement.**

A person appointed to fill a vacancy in the office of coroner who has never taken the Basic Education Course and passed the examination shall attend the next scheduled course and pass the examination given at its conclusion. The failure to meet the basic education requirement will result in a vacancy in the office.

**§ 199.30. Appointments made more than 6 months prior to course.**

When a chief deputy coroner or full-time deputy is appointed more than 6 months before the next scheduled Basic Education Course, the coroner making the appointment shall apply to the Board for an extension of time in which the deputy may take the required course.

**CONTINUING EDUCATION**

**§ 199.41. Continuing education.**

Coroners and deputy coroners are required to obtain a minimum of 8 hours of continuing education credits in each calendar year. Continuing education credits are to be obtained in subject areas relevant to the statutorily defined duties of coroners and deputy coroners.

**§ 199.42. Approval of course for continuing education credit.**

Persons seeking to have a course approved for continuing education credit shall submit a course approval application form to the chairperson of the Board at least 90 days prior to the date of instruction. Approval will not be given retroactively.

**§ 199.43. Standards for course approval.**

In evaluating the suitability of a course proposed for continuing education credit, the chairperson and the Board shall consider factors such as the relevancy of the course content to the duties of the coroner and the qualifications of the course instructors, including education and experience in the subject matter of the course.

**§ 199.44. Approval by chairperson.**

The chairperson of the Board has the right to approve courses for continuing education credits subject to ratification by the Board.

**§ 199.45. Board ratification.**

Continuing education courses approved by the chairperson of the Board will be proposed for Board ratification at the next regularly scheduled Board meeting.

**§ 199.46. Approval by simple majority.**

Concurrence by a simple majority of the Board is needed to ratify the chairperson's approval of a course for continuing education.

**§ 199.47. Unit of credit.**

(a) Attendees at approved continuing education courses will be granted 1 hour of continuing education credit for 1 hour of instruction. Credit in excess of 8 hours will not be given.

(b) Teachers at an approved continuing education course will be granted 1 hour of continuing education credit for each hour of instruction. Credit in excess of 8 hours will not be given.

**§ 199.48. Continuing education for persons required to attend Basic Education Course.**

Within the first year of election or appointment, persons required to complete the Basic Education Course shall also obtain 8 hours of continuing education.

**§ 199.49. Failure of coroner to meet continuing education requirements.**

When a person holding the office of coroner fails to meet yearly continuing education requirements, the Board will notify the Governor, in writing, following the last Board meeting of the calendar year.

**§ 199.50. Failure of chief deputy coroner or full-time deputy coroner to meet continuing education requirements.**

When a chief deputy coroner or full-time deputy coroner fails to meet yearly continuing education requirements, the Board will notify the coroner of the proper county and the county commissioners or county executive, as appropriate. The notification will be made in writing following the last Board meeting of the year.

**§ 199.51. Requirements for reappointees to vacancies.**

If a coroner reappoints a chief deputy or full-time deputy to a vacancy created by that individual's failure to meet the yearly continuing education requirement, the Board will deem that individual to be newly appointed and subject to § 199.21 (relating to general requirement).

**RESPONSIBILITY OF EDUCATION PROVIDERS****§ 199.61. Statement of Board approval.**

Course providers may not represent that a course has been approved for continuing education requirements unless written authorization has been received from the Board.

**§ 199.62. Verification of attendance.**

Course providers are responsible for taking attendance, verifying attendance upon Board request and notifying course attendees of approved hours of credit.

**§ 199.63. Certificate of attendance.**

Course providers are responsible for providing a written certificate of attendance to the attendee indicating course

title and date, the name of course provider and the number of hours of approved credit earned.

**§ 199.64. Notification to Board.**

Course providers shall submit to the Board a list of all course attendees with the number of credit hours earned, within 60 days of completion of the course.

**REGISTRATION OF CORONERS AND DEPUTIES****§ 199.71. Board to maintain current list.**

The Board will maintain a list of all currently elected coroners.

**§ 199.72. Coroners' duty to notify Board.**

Coroners shall provide the Board with the names of all chief deputy coroners and full-time deputy coroners within 30 days of their appointment. Coroners shall notify the Board within 30 days of the departure of chief deputy and full-time deputy coroners. Notification shall be made in writing addressed to Chairperson, Coroners' Education Board, c/o Office of Attorney General, 16th Floor Strawberry Square, Harrisburg, Pennsylvania 17120.

[Pa.B. Doc. No. 01-1040. Filed for public inspection June 15, 2001, 9:00 a.m.]

**Title 55—PUBLIC WELFARE****DEPARTMENT OF PUBLIC WELFARE****[55 PA. CODE CHS. 140 AND 178]****Special MA Eligibility Provisions; Resource Provisions for Categorically Needy NMP-MA and MNO-MA**

The Department of Public Welfare (Department), by this order, adopts the amendments to read as set forth in Annex A under the authority of sections 201(2) and 403(b) of the Public Welfare Code (act) (62 P. S. §§ 201(2) and 403(b)) which, respectively, authorize the Department to promulgate regulations which will increase Federal funding in joint State/Federal welfare programs and delegate to the Department the power to adopt regulations setting rules and standards for eligibility for welfare programs. A notice of rule change (NORC) was published at 23 Pa.B. 2878 (June 19, 1993) effective June 1, 1993.

Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL) and 1 Pa. Code § 7.4(1)(iv) (relating to omission of notice of proposed rulemaking) because the administrative regulations relate to Commonwealth grants and benefits. Additionally, notice of proposed rulemaking is omitted for good cause as unnecessary, under section 204(3) of the CDL and 1 Pa. Code § 7.4(3) because these regulations eliminate the resource standards when determining Medical Assistance (MA) eligibility for low-income children under 21 years of age and low-income families with children under 21 years of age. Notice of proposed rulemaking is omitted as impracticable because these amendments are already in effect and issuance of proposed rulemaking would unnecessarily delay this beneficial policy. These amendments have been implemented under the NORC effective June 1, 1993, and no public comments have been received by the Department.

Section 1902(r)(2) of the Social Security Act (42 U.S.C.A. § 1396(r)(2)) permits states to adopt a less restrictive methodology for the Federally-funded categories of MA when determining resource eligibility. The Health Care Financing Administration (HCFA) approved the Commonwealth's amendment to its Title XIX Medicaid State Plan based on a less restrictive resource methodology. The amendment applies to the Federally-funded categories of MA and will also be applied to the General Assistance (GA)-related MA categories with children under 21.

*Purpose*

The purpose of these amendments is to eliminate the resource standards used when determining MA eligibility for low-income children under 21 years of age and low-income families with children under 21 years of age. By applying a uniform standard, the MA application and eligibility determination process will be simplified. A child's immediate family includes the child, the biological or adoptive parent of the child under 21 years of age, the spouse of the parent, the child's relatives under 21 years of age and includes the brother, sister, step-brother, step-sister, half-brother or half-sister who are under 21 years of age who also live with this child. The resource exclusion also applies to the resources of a caretaker with whom the child is living if the caretaker is not an immediate family member and is exercising care and control of the child under 21 years of age.

*Background*

The elimination of the different resource standards used in the MA eligibility determination process assures that all low-income children under 21 years of age and low-income families with children under 21 years of age will be treated in an equitable manner.

*Need for Amendments*

These amendments are needed to codify into the Department's regulations the Medicaid State Plan Amendment approved by HCFA and implemented by the Department by the NORC published at 23 Pa.B. 2878 effective June 1, 1993. The codification of the less restrictive resource methodology for MA eligibility determinations for low-income children and their families assures the continued access of Federal funding.

*Summary of Amendments*

*A. Definition (§§ 140.2, 140.202 and 178.2)*

The term "immediate family" is added to these sections and is defined as the child, the biological or adoptive parent of a child under 21 years of age, the spouse of the parent and the brother, sister, step-brother, step-sister, half-brother or half-sister who are under 21 years of age and who are living together.

*B. Resources of Children Under 21 years of age and Families with Children Under 21 years of age (§ 140.100)*

This section is added to specify that the resources of the Healthy Beginnings child under 21 years of age and the Healthy Beginnings applicant/recipient with children under 21 years of age are excluded. The resource exclusion also applies to the resources of a caretaker with whom the child is living if the caretaker is not an

immediate family member and is exercising care and control of the child under age 21 years of age.

*C. Resources of Children Under 21 years of age and Families with Children Under 21 years of age (§ 140.305)*

This section is added to specify that the resources of the Healthy Horizons child under 21 years of age and the Healthy Horizons applicant/recipient with children under 21 years of age are excluded. The resource exclusion also applies to the resources of a caretaker with whom the child is living if the caretaker is not an immediate family member and is exercising care and control of the child under age 21 years of age.

*D. Resources of Children Under 21 years of age and Families with Children Under 21 years of age (§ 178.84)*

This section is added to specify that the resources of the blind and disabled Supplemental Security Income (SSI)-related child under 21 years of age and the aged, blind and disabled SSI-related applicant/recipient with children under 21 years of age are excluded when determining MA resource eligibility for Categorically Needy Nonmoney Payment (NMP) and Medically Needy Only (MNO) MA. The resource exclusion also applies to the resources of a caretaker with whom the child is living if the caretaker is not an immediate family member and is exercising care and control of the child under 21 years of age.

*E. Resources of Children Under 21 years of age and Families with Children Under 21 years of age (§ 178.163)*

This section is added to specify that the resources of Temporary Assistance for Needy Families (TANF) and GA-related children under 21 years of age and TANF-related and GA-related families with children under 21 years of age are excluded when determining resource eligibility for NMP and MNO-MA. The resource exclusion also applies to the resources of a caretaker with whom the child is living if the caretaker is not an immediate family member and is exercising care and control of the child under age 21 years of age.

*Affected Persons and Organizations*

These regulations apply to children under 21 years of age and immediate families with children under 21 years of age who are applying for, or receiving, MA. The regulations also exclude the resources of a caretaker with whom the child is living if the caretaker is not an immediate family member and is exercising care and control of the child under age 21 years of age.

*Accomplishments/Benefits*

These regulations will have a positive benefit for all low-income children under 21 years of age and families with children under 21 years of age who have, or receive, resources. The regulations will also benefit the caretaker who exercises care and control of a child.

*Fiscal Impact*

*Commonwealth:*

This change in requirements is effective retroactive to June 1, 1993, and is estimated to cost the Department \$9.515 million (\$4.408 million in State funds) during Fiscal Year 1998-1999. However, since this policy change was procedurally implemented on June 1, 1993, these



increased costs are implicitly included in the Department's budget projections for Fiscal Year 1998-1999.

**Public Sector:**

There will be no costs or savings incurred by the public sector.

**Private Sector:**

There will be no costs or savings incurred by the private sector.

*Paperwork Requirements*

These regulations require no additional forms or reports.

*Effective Date*

Upon publication in the *Pennsylvania Bulletin*, these regulations are effective as final rulemaking retroactive to June 1, 1993.

*Sunset Date*

No sunset date is applicable. The Department continuously reviews the MA Program and regulations through the Federally-monitored Quality Control process. HCFA staff conduct audits periodically on specific aspects of the MA Program.

*Public Comments*

Although these regulations are being adopted without prior notice, interested persons are invited to submit written comments within 30 days from the date of this publication for consideration by the Department as to whether the regulations should be revised. Comments should be sent to the Department of Public Welfare, Edward J. Zogby, Acting Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5886 (Voice users).

*Regulatory Review Act*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. §§ 745.5a(c)), on April 25, 2001, the Department submitted copies of these final-omitted regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. On the same date, the final-omitted regulations were submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, on May 15, 2001, these final-omitted regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, on May 17, 2001, IRRC met and approved the final-omitted regulations.

*Findings*

The Department finds that:

(1) Public notice of intention to amend the administrative regulations amended by this order is omitted in accordance with section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1)(iv) because administrative regulations relate to Commonwealth grants and benefits. Additionally, the procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because these amendments eliminate the resource standards when determining MA eligibility for low-income children

under 21 years of age and low-income families with children under 21 years of age. These amendments are based on the HCFA's approval of an amendment to the Commonwealth's Title XIX Medicaid State Plan excluding from the eligibility determination process, the resources of low-income children under 21 years of age and low-income families with children under 21 years of age. Furthermore, notice of proposed rulemaking is omitted as impracticable because these amendments are already in effect and issuance of proposed rulemaking would unnecessarily delay this beneficial policy. These amendments have been implemented under a NORC effective June 1, 1993, and no public comments have been received by the Department.

(2) The adoption of these amendments in the manner provided in this order is necessary and appropriate for the administration and enforcement of the act.

*Order*

The Department, acting under the act, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 140 and 178, are amended by amending §§ 140.2, 140.202 and 178.2 and by adding §§ 140.100, 140.305, 178.84 and 178.163 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin* and apply retroactively to June 1, 1993.

FEATHER O. HOUSTOUN,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 2855 (June 2, 2001).)*

**Fiscal Note:** 14-449. (1) General Fund;

	<i>MA—Outpatient</i>	<i>MA—Inpatient</i>
(2) Implementing Year 1998-99 is	\$1.283 million	\$3.125 million
(3) 1st Succeeding Year 1999-00 is	\$1.445 million	\$3.522 million
2nd Succeeding Year 2000-01 is	\$1.663 million	\$3.978 million
3rd Succeeding Year 2001-02 is	\$1.845 million	\$4.495 million
4th Succeeding Year 2002-03 is	\$2.085 million	\$5.079 million
5th Succeeding Year 2003-04 is	\$2.356 million	\$5.739 million
	<i>MA—Outpatient</i>	<i>MA—Inpatient</i>
1997-98	\$792 million	\$452 million
1996-97	\$799 million	\$437 million
1995-96	\$663 million	\$428 million

(8) recommends adoption. Funds are included in the 1998-99 budget for this purpose.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS

Subchapter A. THE CATEGORICALLY NEEDED HEALTHY BEGINNINGS PROGRAM FOR PREGNANT WOMEN AND QUALIFIED CHILDREN

GENERAL PROVISIONS

§ 140.2. Definitions.

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

*Applicant*—A pregnant woman or qualified child, or an individual applying on their behalf.

*Budget group*—A pregnant woman or qualified child.

*Earned income*—Money or other compensation received in return for services rendered.

*Emancipated*—An individual, under the age of 19, whether residing in or out of the parental household, who is no longer under the care and control of the parent.

*Family*—Parents, spouses and their children under the age of 21, when living together.

*Immediate family*—The child, the biological or adoptive parent of a child under 21 years of age, the spouse of the parent, and the brother, sister, step-brother, step-sister, half-brother or half-sister who are under 21 years of age. The immediate family members must be living together.

*LRR*—Legally Responsible Relative—The spouse of a pregnant woman, or the biological or adoptive parent of an unemancipated child under the age of 19.

*Nonrecurring income*—Income that is received in a single payment and not expected to continue.

*Qualified child*—A child who meets the age standards in section 1902 of the Social Security Act (42 U.S.C.A. § 1396a).

*Qualified provider*—An MA provider designated by the Department for the purpose of determining presumptive eligibility.

*Restricted income*—Income limited by the payer for the use of a specified person.

*Unearned income*—Money or other compensation received for which a service is not rendered.

RESOURCE EXCLUSIONS

§ 140.100. Resources of children under 21 years of age and families with children under 21 years of age.

The resources of the Healthy Beginnings child under 21 years of age and the Healthy Beginnings applicant/recipient immediate families with children under 21 years of age are excluded. If the child who is under 21 years of age is living with a caretaker who is not immediate family as defined in § 140.2 (relating to definitions) and who exercises care and control of the child, the resources of the caretaker are excluded.

Subchapter B. ELIGIBILITY PROVISIONS FOR THE HEALTHY HORIZONS PROGRAM FOR THE ELDERLY/DISABLED

GENERAL PROVISIONS

§ 140.202. Definitions.

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

*Applicant/recipient*—A person who is applying for, or receiving, benefits under the Healthy Horizons Program.

*Calendar quarter*—A period of 3-full calendar months beginning with January, April, July or October.

*Countable net income*—Income counted in determining income eligibility for Healthy Horizons, less appropriate exemptions, deductions and disregards.

*Earned income*—Money or other compensation received in return for services rendered.

*Immediate family*—The child, the biological or adoptive parent of a child under 21 years of age, the spouse of the parent, and the brother, sister, step-brother, step-sister, half-brother or half-sister who are under 21 years of age. The immediate family members must be living together.

*Infrequent income*—Income that is received not more than once in a calendar quarter.

*Irregular income*—Income that is not subject to scheduling or is unpredictable.

*Legal guardian*—A person who is court appointed as the legal guardian.

*Personal property*—Privately owned possessions which are not real property. The term includes cash, bank accounts, stocks, bonds, mortgages, cash value of life insurance policies, household furnishings, personal effects, motor vehicles, boats and Federal, State and local tax refunds.

*QI—Qualifying individual*—An individual who is enrolled in Medicare hospital insurance under Part A and meets the income requirements in § 140.231(c) or (d) (relating to income eligibility limitations) and resource requirements in § 140.301 (relating to resource eligibility limitations).

*QI-1s—Qualifying Individual-1s*—A qualifying individual who meets the income requirements in § 140.231(c). Eligibility for Medicaid benefits is limited to full payment of Medicare Part B premiums.

*QI-2s—Qualifying Individual-2s*—A qualifying individual who meets the income requirements in § 140.231(d). Eligibility for Medicaid benefits is limited to partial payment of Medicare Part B premiums.

*QMB—Qualified Medicare beneficiary*—An individual who is entitled to, or voluntarily enrolled in, Medicare hospital insurance under Part A.

*Real property*—Land, buildings, mobile homes and improvements thereto.

*SLMB—Specified low-income Medicare beneficiary*—An individual who meets the eligibility requirements for QMB status except for income in excess of the QMB income limit, but not exceeding the limits specified in § 140.231.

*SSI—Supplemental Security Income*—The benefit amount paid to an eligible person or to an eligible person and the eligible spouse under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383c).

*Spouse*—A person who is married to another by legal ceremony or by common-law.

### RESOURCES EXCLUSIONS

#### § 140.305. Resources of children under 21 years of age and families with children under 21 years of age.

The resources of the Healthy Horizons child under 21 years of age and the Healthy Horizons applicant/recipient immediate families with children under 21 years of age are excluded. If the child who is under 21 years of age is living with a care-taker who is not immediate family as defined in § 140.202 (relating to definitions) and who exercises care and control of the child, the resources of the caretaker are excluded.

#### Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

### CHAPTER 178. RESOURCE PROVISIONS FOR CATEGORICALLY NEEDY NMP-MA AND MNO-MA

#### Subchapter A. GENERAL PROVISIONS FOR MA RESOURCES COMMON TO ALL CATEGORIES OF MA

#### GENERAL PROVISIONS FOR MA RESOURCES

#### § 178.2. Definitions.

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

\* \* \* \* \*

*Immediate family*—The child, the biological or adoptive parent of a child under 21 years of age, the spouse of the parent, and the brother, sister, step-brother, step-sister, half-brother or half-sister who are under 21 years of age. The immediate family members must be living together.

\* \* \* \* \*

#### Subchapter B. AGED, BLIND AND DISABLED CATEGORIES OF MA

### RESOURCE EXCLUSIONS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

#### § 178.84. Resources of children under 21 years of age and families with children under 21 years of age.

The resources of the SSI-related child under 21 years of age and SSI-related applicant/recipient immediate families with children under 21 years of age are excluded. If the child who is under 21 years of age is living with a caretaker who is not immediate family as defined in § 178.2 (relating to definitions) and who exercises care and control of the child, the resources of the caretaker are excluded.

#### Subchapter C. TANF-RELATED AND GA-RELATED CATEGORIES OF MA

### RESOURCE EXCLUSIONS FOR THE TANF-RELATED AND GA-RELATED CATEGORIES OF MA

#### § 178.163. Resources of children under 21 years of age and families with children under 21 years of age.

The resources of the TANF-related and GA-related child under 21 years of age and TANF-related and GA-related immediate families with children under 21 years of age are excluded. If the child who is under 21 years of age is living with a caretaker who is not immediate family as defined in § 178.2 (relating to

definitions) and who exercises care and control of the child, the resources of the caretaker are excluded.

[Pa.B. Doc. No. 01-1041. Filed for public inspection June 15, 2001, 9:00 a.m.]

### [55 PA. CODE CH. 181]

### Medical Assistance Income

The Department of Public Welfare (Department), by this order, adopts the amendments to read as set forth in Annex A under the authority of sections 201(2) and 403(b) of the Public Welfare Code (act) (62 P. S. §§ 201(2) and 403(b)). Section 201(2) of the act provides that the Department has the authority to promulgate regulations with approval of the Governor. Section 403(b) of the act provides that the Department establish rules, regulations and standards consistent with law.

Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL), and 1 Pa. Code § 7.4(1)(iv) (relating to omission of notice of proposed rulemaking) because the administrative regulation relates to Commonwealth grants and benefits. The Health Care Financing Administration (HCFA) has determined that under the nursing home reform provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), the Commonwealth is required to consider compensable drugs as a covered service for Medically Needy Only-Medical Assistance (MNO-MA) recipients receiving nursing facility services. Additionally, notice of proposed rulemaking is omitted for good cause as unnecessary and contrary to the public interest under section 204(3) of the CDL and 1 Pa. Code § 7.4(3).

The inclusion of compensable drugs for MNO-MA recipients receiving nursing facility services permits the Commonwealth to receive Federal Financial Participation for providing compensable drugs. Previously, MNO-MA recipients in nursing facilities received compensable drugs through a State-funded pharmaceutical program. This amendment is beneficial to MNO-MA recipients receiving nursing facility services. Therefore, the Department finds proposed rulemaking is unnecessary because this amendment eliminates the requirement for recipients to enroll in the Pharmaceutical Assistance Contract for the Elderly (PACE) Program and codifies existing practice.

#### *Purpose*

The purpose of this amendment is to eliminate the requirement that an MA recipient receiving nursing facility services must meet the enrollment requirements for the PACE Program in determining the MA recipient's expected contribution toward the cost of nursing facility services.

#### *Background*

HCFA determined that under the nursing home reform provisions of OBRA 87, states are required to reimburse incurred costs of drugs provided to all MA recipients receiving nursing facility services. Section 1919(b)(4)(A)(iii) of the Social Security Act (42 U.S.C.A. §§ 1396r(b)(4)(A)(iii)) requires nursing facilities as a condition of participation in the Medicaid Program to provide pharmaceuticals to the extent necessary to fulfill each resident's plan of care. Section 1902(a)(13) of the Social

Security Act found in (42 U.S.C.A. § 1396(a)(13)) requires states to pay nursing facilities through the use of rates which take into account the cost of complying with Medicaid participation requirements.

As the provision of drugs is a Medicaid nursing facility participation requirement, the Federal mandate requires that the Commonwealth reimburse the incurred costs of drugs provided to all MA eligible nursing facility residents. Federal law requires the Commonwealth to consider compensable drugs as a covered service for MNO-MA recipients receiving nursing facility services.

The Office of Medical Assistance Programs (OMAP) amended its regulations in § 1121.22 (relating to scope of benefits for the medically needy) to include coverage of pharmaceuticals for MNO-MA recipients receiving nursing facility services effective June 1, 1994. *Medical Assistance Bulletin* Number 1121-94-01 issued June 24, 1994, with an effective date of June 1, 1994, and Notice of Rule Change published in the *Pennsylvania Bulletin* at 24 Pa.B. 3760 (July 30, 1994) with an effective date of June 1, 1994, informed pharmacies and licensed prescribers that the Department is including the coverage of pharmaceuticals for MNO-MA recipients receiving nursing facility services.

This change necessitates a revision to the Office of Income Maintenance eligibility regulation in § 181.452(d)(5)(ii)(B) and (iii) (relating to posteligibility determination of income available from an MA eligible person toward the person's cost of care) requiring that an MA recipient enroll in the PACE Program. Current regulations allow for the deduction from income of the full prescription costs depending upon whether an MA recipient has met the enrollment requirements for the PACE Program. The inclusion of prescription drugs as a covered service for MNO-MA recipients in nursing facilities eliminates the need for the recipients to enroll in the PACE Program.

TANF-related (Temporary Assistance for Needy Families) recipients referenced in § 181.542(d) (relating to categories of MNO-MA) in Annex A include persons who qualify for MA under the pre-TANF (Aid to Families with Dependent Children) eligibility rules. See section 1931 of the Social Security act (42 U.S.C.A. § 1396u-1).

These amendments are a benefit to MNO-MA recipients who are receiving nursing facility services. Effective June 1, 1994, OMAP included pharmaceuticals as a covered service for MNO-MA recipients receiving nursing facility services.

#### *Need for Amendment*

The amendment is needed to remove the requirements to enroll in the PACE Program currently in § 181.452(d)(5)(ii)(A) and (B) and (iii). The inclusion of prescription drugs as a covered service for MNO-MA recipients eliminates the need for recipients to enroll in the PACE Program.

#### *Summary*

The subparagraph has been revised and the clauses have been eliminated from § 181.452(d)(5)(ii)(A) and (B) and (iii) to remove the enrollment requirement for the PACE Program. The inclusion of prescription drugs as a covered service for MNO-MA recipients in nursing facilities eliminates the need for the recipients to enroll in the PACE Program.

#### *Affected Persons and Organizations*

This amendment will affect persons applying for, or receiving, MNO-MA who are receiving nursing facility

services. This includes recipients who reside in Intermediate Care Facilities/Mental Retardation facilities and county and private nursing facilities.

#### *Accomplishments/Benefits*

This amendment will benefit MNO-MA recipients receiving nursing facility services. This change eliminates the requirement for recipients to enroll in the PACE Program and eliminates one additional procedure the recipient was required to fulfill in obtaining prescriptions.

The amendment is consistent with section 1919(b)(4)(A)(iii) of the Social Security Act which requires prescription drugs as a covered service for MA recipients in nursing facilities.

#### *Fiscal Impact*

The net impact to the Department is anticipated to be \$1.994 million (\$0.924 million in State funds) during Fiscal Year 1998-1999. This cost will be offset by anticipated savings to the Commonwealth's PACE Program.

#### *Paperwork Requirements*

This regulation requires no additional forms or reports.

#### *Effective Date*

This amendment is effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking retroactive to June 1, 1994.

#### *Sunset Date*

No sunset date is applicable. The Department continuously reviews the MA Program and regulations through the Federally-monitored Quality Control process. HCFA staff conduct audits periodically on specific aspects of the MA Program.

#### *Public Comment Period*

Although this amendment is being adopted without prior notice, interested persons are invited to submit their written comments, suggestions or objections to Edward J. Zogby, Director, Bureau of Policy, Department of Public Welfare, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081, within 30 days from the date of this publication for consideration by the Department as to whether the regulation should be revised.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users).

#### *Regulatory Review Act*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on April 25, 2001, the Department submitted a copy of this final-omitted regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. On the same date, the final-omitted regulation was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, on May 15, 2001, this final-omitted regulation was approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, on May 17, 2001, IRRC met and approved the final-omitted regulations.

#### *Findings*

The Department finds that:

(1) Public notice of intention to adopt the administrative regulation adopted by this order may be omitted as

this rulemaking relates to Commonwealth grants and benefits and is unnecessary and contrary to the public interest under section 204(1)(iv) and (3) of the CDL and the regulation thereunder, 1 Pa. Code § 7.4(1)(iv) and (3).

(2) The adoption of this amendment in the manner provided in this order is necessary and appropriate for the administration and enforcement of the act.

Order

The Department, acting under act, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 181, are amended by amending § 181.452 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking retroactive to June 1, 1994.

FEATHER O. HOUSTOUN,  
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 2855 (June 2, 2001).)

**Fiscal Note:** 14-461. (1) General Fund; (2) Implementing Year 1999-00 is \$9.615 million; (3) 1st Succeeding Year 2000-01 is \$10.681 million; 2nd Succeeding Year 2001-02 is \$11.865 million; 3rd Succeeding Year 2002-03 is \$13.180 million; 4th Succeeding Year 2003-04 is \$14.641 million; 5th Succeeding Year 2004-05 is \$16.251 million; (4) 1998-99 Program—\$738.340 million; 1997-98 Program—\$622.740 million; 1996-97—\$798.836 million; (7) Medical Assistance-Outpatient; (8) recommends adoption. Savings in Medical Assistance-Long Term Care are expected to offset a portion of the cost increase in Medical Assistance-Outpatient. Funds are available in the Department's budget to cover any remaining cost.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 181. INCOME PROVISIONS FOR CATEGORICALLY NEEDY NMP-MA AND MNO-MA

Subchapter D. POSTELIGIBILITY DETERMINATION OF ELIGIBILITY FOR MA PAYMENT TOWARD COST OF CARE IN INSTITUTIONS

POSTELIGIBILITY DETERMINATION PROVISIONS

§ 181.452. Posteligibility determination of income available from an MA eligible person toward his cost of care.

\* \* \* \* \*

(d) The following amounts are deducted from the MA eligible person's total gross income identified in subsection (a) for persons in the aged, blind and disabled-related categories, or subsection (b) for persons in the TANF-

related or GA-related categories and adjusted as applicable by the treatment of Veterans Administration benefits under subsection (c) for all MA eligible persons in the following order:

\* \* \* \* \*

(5) The following medical expenses which are not subject to payment by a third party are deducted in the calendar month the medical expenses are paid.

(i) Medicare and other health insurance premiums, including enrollment fees, deductibles or coinsurance charges incurred by the MA eligible person.

(ii) Copayments or deductibles, including the amount an applicant/recipient participating in the Copayment Program is required to pay by the Department subject to the Department's established copayment limit.

(iii) Expenses paid by the MA eligible person for necessary medical or remedial care recognized under State statutes or regulations but not covered under the MA Program.

(6) An amount for maintenance of a single MA eligible person's home if a physician has certified that he is likely to return to his home within a 6-month period from the date he entered the facility. When this deduction is given, it may not be deducted for more than one 6-consecutive month period. The maintenance need amount for the single person is the MA income limit for one person in Appendix A. A home is defined as the residence maintained by the MA eligible person before he entered the facility and to which he plans to return. If a person is discharged and subsequently returns to a facility, the single MA eligible person is eligible for a new 6 consecutive month period for this deduction if a physician certifies that the person is likely to return to his home within a 6-month period from the date of admittance to the facility.

(e) The amount that the MA eligible person is expected to pay toward the cost of care is the amount that remains and as adjusted under subsection (c), if applicable, and after the deductions in subsection (d) are applied to the person's total gross income as determined under subsections (a) and (b).

[Pa.B. Doc. No. 01-1042. Filed for public inspection June 15, 2001, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 53]

Permits for Unpowered Boats Using Commission Lakes and Access Areas

The Fish and Boat Commission (Commission) by this order amends Chapter 53 (relating to Commission property). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to permits for unpowered boats using Commission lakes and access areas.

A. Effective Date

The amendments will go into effect upon publication of this order in the *Pennsylvania Bulletin*. However, the

Commission will not issue use permits under § 53.27 (relating to use permits for unpowered boats) until December 1, 2001.

#### B. Contact Person

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available electronically through the Commission's website <http://www.fish.state.pa.us>.

#### C. Statutory Authority

The amendments are published under the statutory authority of section 742(e) of the code (relating to use of property).

#### D. Purpose and Background

The amendments are designed to update, modify and improve the Commission's regulations pertaining to unpowered boats using Commission lakes and access areas. The specific purpose of the amendments is described in more detail under the summary of changes.

#### E. Summary of Changes

On December 20, 2000, Governor Ridge signed Senate Bill 1117 into law as Act 115 of 2000, effective immediately. Act 115 of 2000 amends the code by adding subsection (e) to section 742. The amendment provides that the Commission shall, by regulations adopted within 1 year after the effective date of the section, provide for issuance of use permits, valid for 1 or 2 years, for unpowered boats that are not registered in accordance with law, to use Commission property. The amendment also provides that on and after the effective date of the regulations promulgated by the Commission, the owner of an unpowered boat that uses Commission property shall have the option of registering the boat or purchasing a use permit. The amendment further provides that the Commission shall establish fees for use permits and that these fees may not exceed the fees charged by the Department of Conservation and Natural Resources (DCNR) for boat launch permits for State parks lakes. Last, the amendment provides that the Commission shall, in cooperation with DCNR, provide for reciprocal or joint use/launch permits for unpowered boats to use both Commission and State parks lakes and access areas.

This amendment addresses an issue that has been of some concern to unpowered boat owners for several years. It allows the Commission to issue use permits for boats that use Commission property in lieu of registration. To move forward with timely implementation of this new law, the Commission has adopted regulatory amendments that address the following:

(1) *Extending reciprocity with the DCNR launch permits.* DCNR already extends reciprocity to unpowered boats registered by the Commission. It is expected that DCNR will amend its regulations to extend this reciprocity to Commission use permits. Since DCNR already recognizes the Commission's registrations, it was unnecessary to condition the effective date of this reciprocity on changes to DCNR regulations.

(2) *Eliminating the exception for out-of-State boats.* The Commission changed its regulations, effective February 19, 2000, to provide that out-of-State unpowered boats are in compliance with the Commission's requirements if they comply with the registration requirements of their state of principal use. This change had the effect of exempting most out-of-State unpowered boats from having to register their boats to use Commission property. It

was designed to deal with the anomaly whereby out-of-State boats could not use Commission access areas unless they were registered. It would not have been appropriate to require such a boat to register in this Commonwealth since this Commonwealth was not the state of principal use. With the new Commission use permit and reciprocity with DCNR launch permits, owners of out-of-State boats that want to use Commission lakes and access areas have several options and do not have to register their boats. Accordingly, the exception for out-of-State boats is no longer required.

(3) *New use permits.* The fees for the use permit are set at the same level as that for DCNR resident launch permits: currently, \$10 per year; \$18 for 2 years. A 1-year permit expires at the end of the calendar year for which it was issued, and a 2-year permit expires at the end of the calendar year following the year for which it was issued. Although it is conceivable that the Commission could issue permits valid for 12 or 24 months from the date of issuance, the process involves somewhat more administrative complications. The new regulation permits the Executive Director to adjust the fees whenever DCNR does so. The new permits are designed to be easy to issue. The information required for issuance of a use permit is considerably less than required for registration of a boat. The Commission will issue use permits on or after December 1, 2001, for 2002 and subsequent years.

On final-form rulemaking, the Commission adopted the amendments as proposed with one change to § 53.27. As proposed, this section required an applicant for a use permit to provide certain information, including the name and address of the owner of the boat if different from the name and address of the applicant. However, the name and address of the boat's owner may not always be readily available to the applicant, and it is the Commission's understanding that DCNR currently does not collect this information when issuing launch permits. The Commission, accordingly, determined that applicants should not be required to provide this information. In addition, technical changes were made to the organization of § 53.8(h) (relating to boats) that do not affect the substance of the amendment adopted by the Commission on final-form rulemaking.

#### F. Paperwork

The amendments will increase paperwork and create new paperwork requirements because individuals who wish to purchase a use permit for their unpowered boats will have to complete a brief application form. However, the information that they will be required to provide is less than that which is required to register a boat.

#### G. Fiscal Impact

The amendments will not have an adverse fiscal impact on the Commonwealth or its political subdivisions. It is anticipated that the Commission and its agents will issue approximately 5,000 use permits during the first year of implementation and that these revenues will offset any program costs. The amendments will impose new costs on those members of the general public who wish to use their unpowered boats on Commission lakes and access areas and who wish to purchase a use permit as opposed to registering their unpowered boats. Although the amendments impose a fee for this new permit (\$10 for 1 year and \$18 for 2 years), this charge should be viewed in light of the current biennial registration fee of \$10 for unpowered boats. The amendments will impose no new costs on the private sector.

H. Public Involvement

A notice of proposed rulemaking was published at 31 Pa.B. 1461 (March 17, 2001). During the public comment period, the Commission received one comment from the Pennsylvania Association of Auto License Brokers, Inc. indicating that its ability to issue the proposed use permits from its member offices would serve as a convenience for both the boating/fishing public as well as the Commission itself. Copies of all public comments have been provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and all comments that were received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

The Commission, acting under the authorizing statute, orders that:

(A) The regulations of the Commission, 58 Pa. Code Chapter 53, are amended by amending § 53.8 and adding § 53.27 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(B) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

(C) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*. However, the Commission will not issue use permits under § 53.27 until December 1, 2001.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-116 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.8. Boats.

\* \* \* \* \*

(h) A boat using a Commission lake or access area shall be registered and display the official registration number and current validation stickers described under Subpart C and Part III of the code.

(1) This subsection does not apply to:

(i) Unpowered boats that display an official and valid use permit issued by the Commission under § 53.27 (relating to use permits for unpowered boats) or that

display an official and valid watercraft launch or mooring permit issued by the Department of Conservation and Natural Resources for use of launch or mooring facilities at this Commonwealth's State parks and forests.

(ii) Noncommercial users of access areas on the Delaware River and West Branch of the Delaware River bounded by the State of New York.

(iii) Public service boats as defined under section 5302(a)(3) of the code (relating to exemptions from registration).

(iv) Unpowered boats participating in events authorized under § 109.6 (relating to special marine events).

(2) Registered unpowered kayaks, sculls, sailboards and other low volume boats of similar design are exempt from displaying registration numbers but shall display a current validation sticker.

§ 53.27. Use permits for unpowered boats.

(a) The Commission and issuing agents designated by the Commission will issue use permits for unpowered boats when their owners choose not to register them to use Commission lakes and access areas.

(b) Use permits will be issued in the form of decals, showing the expiration date. Decals shall be displayed above the waterline on both sides of the bow of the boat for which the permit is issued.

(c) An applicant for a use permit shall provide the following information:

(1) The name, address and telephone number of the applicant.

(2) A description of the boat (make, model, year).

(3) The Hull Identification Number (HIN) of the boat (if readily available).

(d) A use permit is issued for a specific boat. It is unlawful to transfer a use permit issued for a specific boat to another boat. A use permit remains effective for the boat for which it is issued even if ownership of the boat is changed during the term of the permit.

(e) Use permits are valid for 1 or 2 years. The expiration date of a 1-year use permit is December 31 of the year for which it is issued. The expiration date of a 2-year use permit is December 31 of the second year for which it was issued.

(f) The initial fees for the use permits are \$10 for a 1-year permit and \$18 for a 2-year permit. The Executive Director may, by notice published in the Pennsylvania Bulletin, adjust these fees so that they remain the same as the resident price for 1-year and 2-year boat launching permits as established in the schedule of fees published, and from time-to-time revised, by the Department of Conservation and Natural Resources for State parks and forests. Whenever a use permit authorized by this section is issued by an issuing agent other than the Commission or the Department of Conservation and Natural Resources, the issuing agent may charge an issuing agent fee not to exceed \$1 per transaction for issuing the permit.

[Pa.B. Doc. No. 01-1043. Filed for public inspection June 15, 2001, 9:00 a.m.]

**[58 PA. CODE CHS. 61 AND 69]****Seasons, Sizes and Creel Limits; Fishing in Lake Erie and Boundary Lakes**

The Fish and Boat Commission (Commission) by this orders amends Chapters 61 and 69 (relating to seasons, sizes and creel limits; and fishing in Lake Erie and boundary lakes). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to fishing.

**A. Effective Date**

The amendments will go into effect on January 1, 2002.

**B. Contact Person**

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically on the Commission's website (<http://www.fish.state.pa.us>).

**C. Statutory Authority**

The amendments to §§ 61.2, 61.3 and 69.12 (relating to Delaware River and River Estuary; Pymatuning Reservoir; and seasons, sizes and creel limits—Lake Erie) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendment to § 69.33 (relating to use of trap nets) is published under the statutory authority 2903 of the code (relating to boats and net licenses for boundary lakes).

**D. Purpose and Background**

The amendments are designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the amendments is described in more detail under the summary of changes.

**E. Summary of Changes**

(1) *Section 61.2 (relating to Delaware River and River Estuary)*. Management of Delaware River and Estuary striped bass is complicated given that this water borders with the states of New York and New Jersey. Also, the Atlantic States Marine Fisheries Commission (ASMFC) is involved because the striped bass stock is a migratory one. Federal mandates place migratory East Coast striped bass under the purview of the ASMFC having a membership of all Atlantic Coast states as well as the District of Columbia and the Potomac River Fisheries Commission. The existing ASMFC striped bass management plan requires jurisdictions to adhere to a set standard of minimum length and creel limits. Harvest ceilings apply in some fisheries. However, jurisdictions are able to deviate from standard regulations if that the alternative seasons, length limits, creel limits, gear restrictions, and the like, provide a conservation equivalency. State management plans undergo review by the ASMFC Striped Bass Technical Committee before being considered by the Striped Bass Management Board, both of which include representation from the Commonwealth.

The recovery of East Coast striped bass stocks has permitted the liberalization of regulations so anglers, both recreational and commercial, can once again enjoy fishing over an abundance of striped bass. Various stock abundance and harvest indices as well as actual harvest counts/estimates are used to determine stock status and to set the tone for regulations for each fishing season. Unfortunately, the process often results in jurisdictions not being able to implement regulatory changes in a

timely fashion given the timing of Striped Bass Board action and rulemaking processes in the jurisdictions.

Since the early 1980s when ASMFC striped bass management action began in earnest to rebuild seriously depleted stocks, the Commonwealth has worked in concert with neighboring jurisdictions regarding regulations for Delaware River and Estuary striped bass. Previously, Commission regulations provided for a 28 inch minimum length limit, a 2 fish daily possession limit and a year 'round harvest season except for a closed season from January through February and April through May from the Pennsylvania/Delaware state line upstream to Trenton Falls. Delaware and New Jersey, as part of fine-tuning their statewide striped bass regulations including marine fisheries, are making or recently have made changes. New Jersey, in particular, is considering regulations that provide for one fish that is in the 24 to less than 28-inch size range and one fish that is 28 inches and over. In fact, this package applied to the Delaware River from Trenton Falls downstream during much of the 2000 season. The Commission believes that it is desirable to have its regulations be consistent with the New Jersey package, particularly if that state applies the regulations to the freshwater portion of the Delaware River. Accordingly, the Commission has amended § 61.2 to implement a new size and daily creel limit for the Delaware River and Estuary striped bass. Under the amended regulation, one striped bass may be in the 24 to less than 28-inch range, and one striped bass may be 28 inches in length or greater.

(2) *Section 61.3 (relating to Pymatuning Reservoir)*. Pymatuning Reservoir is a 14,000-plus acre flood control and augmentation impoundment in Crawford County, Pennsylvania and Ashtabula County, Ohio. The fishery is jointly managed by the Ohio Department of Natural Resources (Ohio DNR) and the Commission. Representatives from the two agencies meet annually to discuss management issues and plans. In recent years, Ohio DNR changed statewide bass regulations as a result of ongoing studies. The daily creel limit component of the statewide regulations was reduced to five. The Commission was approached about reducing the daily creel limit at Pymatuning Reservoir to five to be consistent with Ohio. Previously, a 12 inch minimum length limit and an eight bass daily limit applied to black bass at Pymatuning, while the statewide limit in this Commonwealth is six.

The Commission has reduced the creel limit in the Pymatuning to five fish to be consistent with statewide regulations in Ohio. The Commission believes that it is unlikely that the three fish reduction will have any impact on the bass population or anglers seeking bass. Creel surveys conducted jointly by both agencies consistently have indicated less than 5% of all anglers were fishing for black bass. Since regulations in Ohio run from March through February while those in this Commonwealth are on a calendar year basis, the regulations will not be congruent for 2 months during the first year of implementation. The Commission, however, believes that this will not be a problem.

(3) *Sections 69.12, 69.31 and 69.33 (relating to seasons, sizes and creel limits—Lake Erie; seasons; and use of trap nets)*. Prior sport fish regulations concerning the harvest of walleye included a daily limit of 6 fish and a 15-inch minimum size limit. The commercial trap net fishery, on the other hand, was regulated by a 15-inch minimum size and an annual total allowable harvest (in pounds) set at the onset of each fishing year. There was no closed season for the sport fishery.



Since the mid 1980's, there has been an inexorable decline in walleye abundance throughout Lake Erie. Walleye presently are only 14% of their 1993 population size. In Commonwealth waters, a similar, continuous trend has been observed. Since 1988, walleye numbers have declined over 80%. Accordingly, the annual estimated number of walleye harvested in this Commonwealth has declined from nearly 250,000 during the late 1980's to 77,000 in year 2000. Explanations for these population decreases are: (1) decreases in overall lake productivity; (2) weaker recruitment patterns and smaller year classes; and (3) gradual increases in exploitation (fishing) rates.

To reverse the downward trend in walleye abundance, it is necessary to increase walleye survival lake-wide and that is expected to increase walleye reproductive potential. While this Commonwealth is not a major source of increased fishing rates, this Commonwealth needs to do its part to insure the walleye's reproductive potential. In this Commonwealth, this can be achieved by restricting fishing during the spawning period. A closed season from mid-March to early May is expected to reserve up to 20% of the potential commercial walleye catch and 1% of the angler catch for conservation purposes as well as limiting the potential to target future increases in early spring walleye spawning populations. This will affect both commercial and recreational fisheries where they occur on Lake Erie, Presque Isle Bay and peninsular waters. Accordingly, the Commission has amended §§ 69.12, 69.31 and 69.33 to include a Lake Erie closed season for walleye from March 15 (12:01) to the first Friday in May (12 midnight).

#### F. Paperwork

The amendments will not increase paperwork and will create no new paperwork requirements.

#### G. Fiscal Impact

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no new costs on the private sector or the general public.

#### H. Public Involvement

A notice of proposed rulemaking was published at 31 Pa.B. 1373 (March 10, 2001). Regarding the proposed changes to §§ 61.2 and 61.3, the Commission did not receive any public comments. The Commission received two comments concerning the proposed Lake Erie closed season for walleye. One of the comments asked several questions about the proposal; the other expressed concern that the Commonwealth will make the same "mistake" that New York made when setting its closed season. Copies of all public comments were provided to the Commissioners. In addition, the Commission held a public information meeting on March 19, 2001, in Erie. Comments offered at the meeting were generally supportive of the proposed change.

#### Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and all comments that were received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

#### Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 61 and 69, are amended by amending §§ 61.2, 61.3, 69.12, 69.31 and 69.33 to read as set forth in 31 Pa.B. 1373.

(b) The Executive Director will submit this order and 31 Pa.B. 1373 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 31 Pa.B. 1373 and deposit the same with the Legislative Reference Bureau as required by law.

(d) This order shall take effect January 1, 2002.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-115 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 01-1044. Filed for public inspection June 15, 2001, 9:00 a.m.]

### [58 PA. CODE CHS. 91 AND 111]

#### Boating Safety Education Certificates; Special Regulations Counties

The Fish and Boat Commission (Commission) by this order amends Chapters 91 and 111 (relating to general provisions; and special regulations counties). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to boating.

#### A. Effective Date

The amendments will go into effect upon publication of this order in the *Pennsylvania Bulletin*.

#### B. Contact Person

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available electronically on the Commission's website (<http://www.fish.state.pa.us>).

#### C. Statutory Authority

The amendment to § 91.6 (relating to Boating Safety Education Certificates) is published under the statutory authority of section 5123 of the code (relating to general boating regulations). The amendments to §§ 111.45, 111.48 and 111.52 (relating to Monroe County; Northampton County; and Pike County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

#### D. Purpose and Background

The amendments are designed to update, modify and improve the Commission's regulations pertaining to boating. The specific purpose of the amendments is described in more detail under the summary of proposal. The Commission's Boating Advisory Board considered the

proposal prior to the publication of the notice of proposed rulemaking containing the amendment and recommended publication.

E. *Summary of Proposal*

(1) *Section 91.6 (relating to Boating Safety Education Certificates)*. The Commission's regulations require that operators of personal watercraft and children who are operating certain boats obtain and carry a Boating Safety Education Certificate. It is the intent of the regulation that the operator receive instruction in boating safety and show competence in the boating regulations and procedures. Carrying the certificate is incidental to this overarching requirement, and the requirement to carry it is intended to help the law enforcement officer ensure that the operator has fulfilled his obligations. It is reasonable to assume that some operators have obtained the requisite certificate but have forgotten it or misplaced it. Citations usually are not issued when the officer can reasonably assume that the certificate is likely available, just not onboard.

The Commission's regulation provides a mail-in procedure for persons who are caught fishing without displaying a license or boating without the boat registration card onboard. This procedure has been very successful and has resulted in greater efficiency and use of officer time. Therefore, the Commission has implemented a similar program for Boating Safety Education Certificates by amending § 91.6 as proposed.

(2) *Sections 111.45, 111.48 and 111.52 (relating to Monroe County; Northampton County; and Pike County)*. The Commission has received notification that the Superintendent of the Delaware Water Gap National Recreation Area has taken action to prohibit the operation of personal watercraft within the boundaries of the area under the jurisdiction of the National Park Service (NPS). The Commission has been asked to amend its regulations to assist in the enforcement of this ban.

The Commission always has had a cooperative relationship with NPS and has attempted to have consistent regulations to help enforcement personnel effectively and uniformly enforce boating safety regulations. Accordingly, the Commission has amended these special boating regulations, as proposed, to be consistent with the new NPS restrictions. In addition, a minor technical change has been made to clarify the numbering of § 111.52(j). This change does not affect the substance of the amendment adopted by the Commission on final rulemaking.

F. *Paperwork*

The amendment to § 91.6 will slightly increase paperwork and will create a few new paperwork requirements because boat operators, who are required by regulation to have a Boating Safety Education Certificate onboard and do not have one in their possession, will have the option of mailing the original certificate to the apprehending officer. If the officer permits the operator to mail the original certificate to the officer, the officer will provide the operator with a receipt or other documentation that will allow the continued operation of the boat during the period that the original certificate is not in possession. The amendments to §§ 111.45, 111.48 and 111.52 will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions, and they will impose no new costs on the private sector. The

amendment to § 91.6 will impose only nominal costs on those members of the general public who mail the original certificate to the apprehending officer. The amendments to §§ 111.45, 111.48 and 111.52 will impose no new costs on the general public.

H. *Public Involvement*

A notice of proposed rulemaking was published at 31 Pa.B. 1375 (March 10, 2001). The Commission did not receive any public comments concerning the proposals.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt these amendments was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and no comments were received.

(3) The adoption of these amendments in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

*Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 91 and 111, are amended by amending §§ 91.6, 111.45 and 111.48 to read as set forth at 31 Pa.B. 1375 and by amending § 111.52 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Executive Director will submit this order, Annex A and 31 Pa.B. 1375 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, Annex A and 31 Pa.B. 1375 and deposit the same with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-113 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart C. BOATING**

**CHAPTER 111. SPECIAL REGULATIONS  
COUNTIES**

**§ 111.52. Pike County.**

\* \* \* \* \*

(j) *Delaware River*: The operation of personal watercraft is prohibited in the following areas:

(1) Upper Delaware Scenic and Recreational River (upstream from mile 258.4).

(2) The Delaware Water Gap National Recreation Area (downstream from mile 250).

[Pa.B. Doc. No. 01-1045. Filed for public inspection June 15, 2001, 9:00 a.m.]

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**[58 PA. CODE CH. 105]**  
**Unacceptable Boating Practices**

The Fish and Boat Commission (Commission) by this order amends Chapter 105 (relating to operational conditions). The Commission is publishing this amendment under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendment relates to boating.

**A. Effective Date**

The amendment will go into effect on January 1, 2002.

**B. Contact Person**

For further information on the amendment, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available electronically on the Commission's website (<http://www.fish.state.pa.us>).

**C. Statutory Authority**

The amendment is published under the statutory authority of section 5123 of the code (relating to general boating regulations).

**D. Purpose and Background**

The amendment is designed to update, modify and improve the Commission's regulations pertaining to boating. The specific purpose of the amendment is described in more detail under the summary of changes. The Commission's Boating Advisory Board considered the proposal prior to the publication of the notice of proposed rulemaking containing the amendment and recommended publication.

**E. Summary of Changes**

Under the code, negligent operation of watercraft represents a deviation from the ordinary standard of care that a reasonable operator would observe under the circumstances. Reckless operation adds the component of willfulness and wanton disregard for the safety of persons or property. The Commission's regulation in § 105.3 (relating to unacceptable boating practices) contains a lesser offense defined as "unacceptable boating practices." This section lists operations that, while unsafe, do not always fall within the definition of negligent or reckless operation.

Section 105.3(1) prohibits the operation of a boat not equipped with railings or other safeguards at a speed of greater than slow minimum height swell speed when any person is riding on the bow, decking, gunwales, transom or motor cover. While this definition has served the safety of boaters well, recent court cases indicate a need to further define this regulation. The majority of boats are equipped with railings intended to keep the occupants of the boats within the confines of the boat. A person riding in a bow rider is on the inside of the railings and in the cockpit of the boat. A person riding on a sailboat deck is within the area encompassed by the railings. The most

prevalent exception to this general boat construction is the pontoon boat. Quite often, the railings of the pontoon boat do not entirely encompass the bow deck of the boat. Frequently, 3 or 4 feet of deck remain outside the railings. This is to facilitate docking and to keep passengers back from the bow to help balance the boat while underway. Certain courts have interpreted § 105.3 to mean that there is no requirement that persons must remain behind safety rails. The Commission therefore has amended this section as proposed.

**F. Paperwork**

The amendment will not increase paperwork and will create no new paperwork requirements.

**G. Fiscal Impact**

The amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment will impose no new costs on the private sector or the general public.

**H. Public Involvement**

A notice of proposed rulemaking was published at 31 Pa.B. 1379 (March 10, 2001). The Commission did not receive any public comments concerning this proposal.

**Findings**

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and no comments were received.

(3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

**Order**

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 105, are amended by amending § 105.3 to read as set forth in 31 Pa.B. 1379.

(b) The Executive Director will submit this order and 31 Pa.B. 1379 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 31 Pa.B. 1379 and deposit the same with the Legislative Reference Bureau as required by law.

(d) This order shall take effect January 1, 2002.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-114 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 01-1046. Filed for public inspection June 15, 2001, 9:00 a.m.]

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