# RULES AND REGULATIONS

# Title 4—ADMINISTRATION
# Title 28—HEALTH AND SAFETY

## DEPARTMENT OF HEALTH

## [4 PA. CODE CH. 259]

## [28 PA.COCE CHS. 701 AND 703]

### Drug and Alcohol Facilities and Services—Standards for Approval of Prevention and Intervention Activities

The Department of Health (Department) deletes 4 Pa. Code §§ 259.1 and 259.2 and 28 Pa. Code § 701.13 and Chapter 713 and amends 28 Pa. Code § 701.1 to read as set forth in Annex A. The provisions being deleted pertain to standards for approval of drug and alcohol abuse prevention and intervention activities. These activities are generally referred to as prevention activities.

*Purpose of the Amendments*

This final-form rulemaking deletes the regulations relating to approval of prevention and intervention activities. A key benefit of this final-form rulemaking is that Department staff and other limited resources will no longer be needed to review prevention and intervention activities and, therefore, may be directed toward oversight of entities providing substance abuse treatment services. This final-form rulemaking will increase the efficiency of the Division of Drug and Alcohol Program Licensure in carrying out its regulatory oversight of the substance abuse treatment delivery system. It will also enhance the redirection of State government efforts from general prevention activities to specific treatment activities to ensure the safe and effective delivery of substance abuse treatment services.

The Department is deleting these provisions because regulation of the substance abuse service delivery system has changed significantly over the past few years, rendering these regulations obsolete. More changes are predicted in the coming years based on current plans to change the health care delivery system at both the State and Federal levels. Even now, much is being done in the field of substance abuse prevention which does not fit within the regulatory definitions of prevention activities that are being deleted. Hence, those activities are not regulated. Nonetheless, they are appropriate and relevant prevention activities. Moreover, the lack of Department approval of these activities under a regulatory scheme has not compromised their quality or effectiveness. Further, much of what has been defined and regulated is no longer being conducted due to the evolving nature of drug and alcohol abuse prevention services.

To better address the needs of the substance abuse service delivery system and maximize benefits from existing resources, it is necessary to modify regulatory oversight and cease the approval of prevention activities. This elimination will reduce the overload on survey staff resources and enable the Department to focus its attention on the oversight of activities that actually provide treatment to the substance abusing client.

The prevention activities that the Department will no longer approve do not provide treatment to clients. The Department's resources will be better used by focusing on activities through which specific substance abuse treatment services are being provided. Prevention activities and services generally provide to the general population and special high risk groups only, information regarding the nature and extent of alcohol and other drug abuse and addictions and their effects on individuals, families and communities.

The Department has been approving approximately 100 prevention activities. Notwithstanding the elimination of the approved processes effected by the deletion of the regulations, the Department will continue to impact these activities, but at less cost and with greater efficiency.

Within the Department, the Bureau of Drug and Alcohol Programs (BDAP), which funds and monitors prevention programs through contracts, and provides counties with funding to provide drug and alcohol services for the citizens of this Commonwealth who do not have insurance or resources to pay for treatment. Single County Authorities (SCAs) prepare prevention plans tailored to the needs of their respective geographic areas. The Department approves these plans and formulates a Statewide plan based on the plans prepared by the SCAs.

Statewide prevention programs provide current information on the effects of drugs and alcohol and assist individuals in developing or improving skills that will enable them to choose a lifestyle free of substance abuse. Educational sessions, workshops and media presentations are used. Also, an information clearinghouse is funded by the Department. Primary emphasis has been given to youth, and a special curriculum is now used in school districts to provide drug and alcohol prevention programs.

The Student Assistance Program (SAP), which encompasses all 501 Commonwealth school districts, provides school personnel with the knowledge and skills needed to identify students using alcohol or drugs. Students are referred to professional evaluators and, if needed, receive treatment services. Special services are designed to divert certain criminal offenders into rehabilitation programs.

The funding of prevention activities by the Department is accomplished through contracts with the SCAs. After the plans referred to previously are submitted, reviewed and approved, the Department funds the SCAs according to a previously established funding formula. The SCAs then provide the prevention services or subcontract to other prevention providers. While for the most part, SCA funding is given to approved prevention providers, the drug and alcohol prevention services being performed are generally not activities that fit within the obsolete definitions of prevention activities that are being deleted. Nevertheless, these funded activities are in line with the current best practices in prevention. Clearly, the provision of these services is appropriate. What this underscores is that since the current activities being performed do not fit within the old definitions, the deletion of some of those definitions is necessary. What it also underscores is that licensure of defined prevention activities is no longer feasible or necessary. The rapid evolution of prevention activities would necessitate a constant revision of the regulations. The funding processes are better suited to deal with the pace of change. The Department's role in those processes ensures its continuing involvement and impact on prevention activities.

The monitoring of the prevention activities is adequately accomplished by the staff of BDAP's Division of

Prevention, which provides up-front technical assistance in the planning of prevention activities and continues prevention assistance and monitoring, and its Division of Program Monitoring, which performs post-performance review and audit to determine compliance with the terms of the entire contract with the SCAs, including the terms addressing prevention.

Almost every Federal and State dollar that is spent on prevention in this Commonwealth passes through the State and counties to prevention providers. The small amount that does not pass through the State is distributed directly by the Federal government to counties or providers through grants. That grant process requires application and review by the Federal government and, in most cases, requires the recipient to have prior prevention experience. Thus, this process contains the necessary checks and balances to ensure that unqualified operators do not receive funds. As for the remainder of the public dollars, the Department, through its agreements with the counties, monitors the services that are being provided, the amounts that are being spent and the results of the services. There is very little chance, if any, that these funds will be provided to individuals or entities that are unscrupulous or unqualified operators.

*Current Prevention System*

Because of the dramatic change in procedures, at least as they have been identified by regulation, a detailed discussion of how the prevention system works without the regulations may be helpful.

A. *Prevention Plan Contractual Requirements*

First, prevention funds provided to the county must be used to develop and implement a comprehensive system of resources that includes a broad array of prevention strategies directed at individuals not identified to be in need of treatment. The services are to be provided either directly by the county or through one or more public or nonprofit private entities. Prevention program activities are to be provided in a variety of settings to targeted populations that are severely affected by risk factors associated with substance abuse, determined through community-wide biannual needs/risk assessments.

Second, the delivery of comprehensive prevention services has been formalized into six major categories of strategies to meet Federal Substance Abuse Prevention and Treatment (SAPT) Block Grant requirements. Services that were previously fragmented as singular activities are now identified by agencies as part of their overall plan for the comprehensive provision of prevention programming to impact their targeted populations. As a management agency for drug and alcohol services, the county must budget for and implement prevention strategies under each category as appropriate to meet the unique needs of its community and fulfill Federal SAPT requirements for this Commonwealth.

Third, the county must submit written reports to the Department at times the Department requires in accordance with the BDAP Report Schedule. The reports need to contain information identified by the Department relating to the activities and categories already discussed.

B. *Performance Based Prevention Services*

The county is required to plan, deliver and evaluate prevention services using BDAP's Performance Based Prevention System. The services must focus on the reduction of risk factors that contribute to substance abuse and the development or enhancement of protective factors that build resilience among individuals, families and communities to reduce targeted risk factors.

The county must ensure that all prevention and early intervention services funded by the county are included in the county's plan to deliver performance based prevention services. The county's prevention plan and annual updates as approved by the Department are incorporated into the county agreement and serve as the county's work statement for prevention and early intervention services.

The county must also ensure that the following criteria are adhered to in the implementation of performance based prevention:

(1) Prevention and early intervention services shall be directed towards reducing risk factors identified by the county through a needs/risk assessment of its service area.

(2) Needs/risk assessment shall be conducted at least every 2 years using the Department's needs/risk assessment survey instrument and its methodologies for obtaining statistical data.

(3) Risk factors deemed by the needs/risk assessments to be most seriously affecting substance abuse within targeted areas shall be identified in the development of long-term (3-5 year) goals, using the Department's performance based prevention process.

(4) Baseline data shall be gathered to determine the current level or risk factors existing within the targeted areas and establish a maximum achievable percentage by which each risk factor is to be reduced.

(5) Standardized indicators established for each risk factor in the performance based prevention software (PBPS) shall be used to measure the reduction of risk and utilized by the county periodically to assess the reduction of risk factors.

(6) A comprehensive structure of measurable objectives, using the six Federal categories of prevention identified in the agreement, shall be developed as a framework for planning and delivering program services that build protective factors for reducing risks associated with substance abuse.

Following are the six Federal categories and examples of activities that comprise the overall concept of prevention services to reduce the abuse of alcohol, tobacco and other drugs:

(1) *Information dissemination*. This category provides awareness and knowledge on the nature and extent of alcohol, tobacco and drug use, abuse and addiction and the effect on individuals, families and communities. It also provides knowledge and awareness of available prevention programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Examples of acceptable activities include, but are not limited to:

- Clearinghouse/information resource centers.
- Resource directories.
- Media campaigns.
- Brochures.
- Radio/TV public service announcements.
- Speaking engagements.
- Health fairs/health promotion.
- Information line.

(2) *Education*. This category involves two-way communication which is distinguished from information dissemination by the fact that interaction between the education/facilitator and the participants is the basis of its activities. Activities under this category are to affect critical life and social skills, including decision-making, refusal skills, critical analysis (such as media messages) and systematic judgment abilities. Examples of acceptable activities include, but are not limited to:

• Classroom or small group sessions (spanning all age groups).

• Parenting and family management classes.

• Peer leader/helper programs.

• Education programs for youth groups.

• Education groups for children of substance abusers.

(3) *Alternative activities*. This category operates under the assumption that healthy activities will deter participants from the use of alcohol, tobacco and other drugs. The assumption is that constructive and healthy activities offset the attraction to, or otherwise meet, the needs usually filled by alcohol, tobacco and other drugs and would, therefore, minimize or obviate resort to the latter. The BDAP will not fund alternative activities unless they are linked to educational or skill-building activities. Examples of acceptable activities include, but are not limited to:

• Drug free dances/parties.

• Youth/adult leadership activities.

• Community service activities.

(4) *Problem identification and referral*. This category targets those persons who have experienced first use of illicit/age-inappropriate use of tobacco, and those individuals who have indulged in the first use of illicit drugs and alcohol, to assess if their behavior can be reversed through education. Examples of acceptable activities include, but are not limited to:

• Employee assistance programs (EAP).

• SAP.

• Driving Under the Influence programs.

(5) *Community-based process*. This category aims directly at building community capacity to enhance the ability of communities to more effectively provide prevention and treatment services for alcohol, tobacco and drug abuse disorders. Activities include organizing, planning, enhancing efficiency and effectiveness of services, interagency collaboration, coalition building and networking. Examples of acceptable activities include, but are not limited to:

• Community and volunteer training.

• Training key leaders, staff/officials.

• Multiagency coordination and collaboration

• Systematic planning.

• Accessing service and funding.

• Community team building.

(6) *Environmental*. This category establishes or changes written and unwritten community standards, codes, ordinances and attitudes thereby influencing incidence and prevalence of the abuse of alcohol, tobacco and other drugs used in the population. This category is divided into two subcategories to permit distinction between activities that center on legal and regulatory initiatives and those that relate to action-oriented initiatives. Examples of acceptable activities include, but are not limited to:

• Promoting establishment or review, or both, of alcohol, tobacco and other drug use policies in schools.

• Technical assistance to communities to maximize law enforcement procedures governing the availability and distribution of alcohol, tobacco and other drugs.

• Modifying advertising practices.

• Product pricing strategies.

The county must ensure that its contracted providers plan, develop, deliver and evaluate science-based program services that coincide with the specific objectives and Federal categories of prevention. Program services must reflect strategies and practices proven to build protective factors within the targeted populations or communities in which they are delivered. The selection of appropriate instruments for evaluating program services must be planned by the county and its contracted providers during the planning of services and shall be applied to evaluate the process, outcomes and impact of prevention services.

Evaluation methodologies may include tracking and assessment of individuals participating in prevention program services. These methodologies must be administered to determine changes in attitudes or behaviors and awareness, knowledge and skills achieved as a result of the services received by participants. This data must be recorded within the appropriate modules of the PBPS data collection system.

The county must monitor, analyze and collect data, as determined by the Department, from its providers monthly. The county must require service providers to collect and analyze service data for quality improvements and submit monthly recommendations to the county. Data must be collected and maintained using the Department's PBPS. The county must aggregate data and submit quarterly data to the Department in accordance with the BDAP Report Schedule.

The county must also evaluate the PBPS data produced by its providers and use it to determine compliance in meeting its annual objectives and to develop methods for improvements in program services. Specific data requested by the Department shall be aggregated through quarterly reports. The Department will monitor the county, evaluate quarterly reports, and provide technical assistance as needed to assist the county in achieving its annual objectives and outcomes toward the reduction of risk factors.

The county must collaborate with agencies and organizations within its service area to establish, deliver and measure comprehensive strategies for reducing identified risk factors that contribute to substance abuse. Data generated by these collaborative efforts shall be used to study and measure the reduction of risk factors within the service area. The county and its contracted providers must cooperate with the BDAP and its evaluators in conducting sample impact studies in communities they serve to determine changes in risk factors.

C. *Reduction of Youth Access to Tobacco*

The county must address the reduction of tobacco use among youth within its prevention plan to comply with Federal requirements. These activities must be in addition to the county's goals, objectives and provision of services for reducing identified risk factors, when the assessment of risk factors does not indicate tobacco use as

severely impacting substance abuse within the county's service area. In addressing the requirements to reduce tobacco use among youth in the county's service area, the county shall at a minimum perform the following functions:

(1) The county must conduct or otherwise secure contracted services in its service area to provide merchant education activities for over-the-counter retailers and establishments having vending machines. These activities must include educating retailers and vending machine operators of their responsibilities and obligations under State and Federal laws relating to youth tobacco sales, youth access to tobacco, as well as emphasizing the health effects of tobacco use. Activities may include, but are not limited to, direct contact with merchants, use of media (that is, TV, radio, newspapers, billboards), educating through vehicles such as trade associations, as well as through community and business responsibility initiatives.

(2) The county must conduct or otherwise ensure that merchant compliance checks are conducted within its geographic area. It must also participate with health district office personnel in conducting semiannual compliance activities.

(3) The county must coordinate with community partners to encourage local efforts to develop strategies to reduce the sales of tobacco products to youth. Partners may include, but are not limited to, the district tobacco prevention consultant, the district chronic disease team of consultants, State Health Improvement Plan, Pennsylvania Tobacco Prevention Network tobacco coalitions, the American Cancer Society, the American Heart Association, the American Lung Association, health care providers and other voluntary organizations. Coordination efforts shall address, but not be limited to, youth access to tobacco product issues, education and cessation initiatives.

(4) The county must address the foregoing requirements as an addendum to the County's Prevention Plan when the assessment of risk factors does not indicate tobacco use as severely impacting substance abuse within the county's service area.

D. *Student Assistance Programs*

The Department provides the county with money under the Safe and Drug Free Schools and Communities Act of 1986, Pub.L. No. 100-297, as amended by the Anti-Drug Abuse Act of 1988, Pub.L. No. 100-690, 20 U.S.C.A. § 3171 et seq., as amended by the Safe and Drug Free Schools and Communities (SDFSC) Act of 1994. The county must use the SDFSC funds for consultation services to school district personnel and core team members, and for assessment and group intervention services for those students involved in SAP. The SDFSC funds may not be used for the provision of treatment services.

The Department also provides the county with State funds and the SAPT Block Grant funds to support SAP. The Department provides the county with State funds annually for consultation, assessment, group intervention or treatment services. The SAPT Block Grant funds provided for SAP under the contract must be used for treatment services only. The amounts provided are for drug treatment services and for alcohol treatment services.

The county must use these funds to provide or arrange for the provision of programs offering drug abuse education, prevention or counseling to students at compulsory school age, including:

(1) Programs to provide drug abuse counseling in a school by trained personnel.

(2) Programs that stress the use of peers to combat student abuse of drugs and alcohol.

(3) Programs that stress community involvement in combating student abuse of drugs and alcohol.

(4) Programs that train Core Team members and teachers to encourage parent involvement in SAP.

(5) Other appropriate programs that target students and parent involvement in SAP.

The programs provided with these funds must be designed to prevent or eliminate student abuse of drugs or alcohol.

The county must use funds provided to expand, extend or replicate a program that has a proven record of success at either the State or local level in preventing or eliminating student abuse of drugs and alcohol.

The county must also ensure that the program to be expanded, extended or replicated is appropriate for the students to be served, based on an assessment of their most important needs.

The county, prior to receiving the funds must provide to the Department, at a time and in a manner and containing or accompanied by other information and assurances the Department may reasonably require, the following:

(1) A discussion of why the particular program is appropriate for and responds to the particular needs of the students to be served.

(2) A complete description of the success of the program in reducing or eliminating drug or alcohol abuse of compulsory school age students.

(3) An assurance that funds shall be used to supplement, not supplant, other Federal, State and local funds expended.

Quarterly SAP Statistical and Fiscal Report Forms and semiannual SAP Treatment Report Forms must be submitted as prescribed by the Department and in accordance with the BDAP Report Schedule. These reports will be used by the Department to monitor the use of the funds received and activities performed. This monitoring of activities and use of funds will be performed to assure compliance with applicable Federal requirements and to assure that performance goals are being achieved. Monitoring will cover each program function or activity. The county must assure the accuracy of those reports.

*Comments*

Proposed rulemaking was published at 31 Pa.B. 2125 (April 21, 2001). A 30-day comment period was provided. The Department received comments from five commentators. The commentators were the Independent Regulatory Review Commission (IRRC), the Council on Alcohol and Drug Abuse (CADA), the Lackawanna County Commission on Drug and Alcohol Abuse, the County of Chester and the Pennsylvania Association of County Drug and Alcohol Administrators, Inc. (PACDAA). The letters from the County of Chester and PACDAA were nearly identical.

The comments are directed toward the rescission in general and not toward any particular section. Thus, it is not possible to list the comments according to sections. Therefore, the Department will summarize the comments in their entirety and respond, without relating them to a particular section or sections being deleted.

*Comment:*

The proposed rulemaking deleted the standards for approval of prevention and intervention activities for drug and alcohol facilities and services. We question the impact on the public health and the reasonableness of deleting these regulations without proffering any proposed rulemaking to take their place. Item #16 of the Regulatory Analysis Form states that a workgroup was convened to develop an alternative to the current regulations. However, the alternative is not discussed in the Preamble to the proposed rulemaking.

With the deletion of these regulations, how will the Department provide oversight of drug and alcohol prevention services and programs? The Department should also explain what alternative will be in place when the Department submits its final-form rulemaking.

*Response:*

There will be no impact on the public health by deleting these regulations even though there are no new regulations to replace them. As already discussed, the deleted regulations have been ineffective and without value to the field of prevention for some time. In fact, through the BDAP's Division of Prevention, the standards of prevention services have been remarkably advanced and improved, despite the current obsolete regulations. The Department currently provides oversight of drug and alcohol services and programs through its contracts with the local SCAs and their subcontracts. This alternative form of monitoring prevention services has been in place for some time. This monitoring and oversight allows for more flexible program services which are in line with current standards of practice, provides for better and more regular monitoring of programs and services, and protects the public health in this area far better than the deleted regulations did.

The comment regarding the workgroup will be discussed in responding to another comment.

*Comment:*

There is no alternate approval process proposed to take the place of the current standards, leaving prevention activities an unregulated activity in this Commonwealth. While the rescission of the current process is necessary, to do so with no alternative process in place presents a window of opportunity for anyone to claim they deliver such services. This will possibly do harm to the field of substance abuse prevention.

*Response:*

While it is true that there will be no regulatory approval process upon rescission of the current regulations, no regulatory process is necessary because of the funding process, as has already been explained. The lack of regulation does not hamper quality prevention services. The services will still be monitored.

As previously explained, monitoring is performed by two different divisions within the BDAP. Contract review, evaluation and notification of the programs is taking place. Whenever certain activities within an SCA are found to be deficient, the divisions provide assistance to allow for correction. If continued problems exist, the contracts allow for the withholding of funds for the period of time until deficiencies are corrected.

This area is one that lends itself less to regulation by the Division of Drug and Alcohol Program Licensure and more to monitoring by the Division of Prevention.

The Department disagrees that the lack of regulation presents a "window of opportunity." In fact, almost anyone can claim to deliver prevention services now. Much of what is appropriate and considered current practice in the field of prevention is already outside the scope of the regulations. For example, Drug Abuse Resistance and Education (D.A.R.E.) is a longstanding prevention program which, because of the archaic definitions in the regulation, is completely outside the scope of regulation by the Department. There are many other worthy programs that provide valuable prevention services which are not regulated.

The Division of Prevention monitors these prevention services and their funding through the SCA contracts and thus ensures that "fly-by-night" operations will not suddenly appear and receive funds. All subcontracts are subject to review by the BDAP, either prior to execution or during the term by the BDAP's Divisions of Treatment and Program Monitoring. If programs are not providing the appropriate quality services, and thus causing the SCA to not comply with the contractual terms, the BDAP has the ability to mandate prompt changes. Further, the SCAs are also required to monitor their own subcontractors. The regular and continuous monitoring of prevention providers and the services and activities they are conducting, by both the Department and SCAs, assures that only quality, experienced prevention programs will receive funds.

*Comment:*

Until a time as an alternative process is in place which will preserve the integrity and professionalism of the prevention field, the Department should continue its regulation of prevention programs.

*Response:*

The alternative process already in place through the BDAP's contracting process does more to preserve the integrity and professionalism of the prevention field than the obsolete regulations did. In fact, prior to this rescission, there were very few prevention services being delivered which were covered by the regulations. The quality and integrity of prevention services is measured and preserved by the outcomes and results as currently monitored by the BDAP. The quality and integrity of the prevention field is not maintained simply because programs are able to comply with some minimal, obsolete standards and thereby secure a certificate of approval to hang on a facility wall. Compliance with the repealed regulations indicated nothing regarding the quality of the prevention services being offered.

*Comment:*

While the Department agrees that the existing regulations are not relevant to and do not reflect current drug and alcohol prevention practice in this Commonwealth, we believe these deletions will put at great risk drug and alcohol prevention services and significant public dollars used to fund the services.

A large amount of State, Federal and local public funding supports drug and alcohol prevention services throughout this Commonwealth. These services touch on most segments of our communities. Therefore it is essential that we ensure a baseline standard is met. By eliminating standards, without any alternative to replace them, it appears that the Department is devaluing prevention and the need for these services.

There has been a great deal of work done on an alternative by many stakeholders. However, there has yet

to be a finished product distributed that has had any, much less adequate, time for comment from affected parties. There should be no elimination of the current prevention regulations until an alternative, which has been commented on by affected parties, has been definitively established.

Finally, adequate financial resources for implementation must accompany whatever alternative is established. The transfer of this responsibility from licensing to another entity results is a shift in costs that must be addressed. The fiscal impact note for the proposed rulemaking states that there would be "no measurable fiscal impact on the Commonwealth, local government, the private sector or the general public." We strongly disagree with this statement.

Whatever alternative is established will require oversight. If this occurs by means of the SCA contracts, it will require new staff at the county level. If it occurs by means of an independent certification body, it will require funding to the selected body from the State, a new fee from prevention providers, or both. As many prevention organizations are grass-roots nonprofits, the need to pay this fee may also have the unintended effect of eliminating effective resources. If no alternative is established then large amounts of taxpayer funds are put at risk for ineffective use.

*Response:*

This comment is a combination of the comments submitted by two commentators. Because both comments were virtually identical, the Department combined them. Both commentators begin their comments by stating that the current regulations do not reflect, and are not relevant to, the current drug and alcohol prevention practice. Given that statement, there can be no greater reason for eliminating the regulations being deleted. These commentators are recommending that the Department keep in place something they admit serves no useful function in the prevention field. The reasons for this position are unclear.

The remainder of the comment makes assertions of alleged potential harm due to the deletion of the regulations without an explanation of the harm that would occur. The first assertion is that the lack of regulation will put at risk prevention services and significant public dollars used to fund these services. The comment provides no explanation for this assertion; however, it is the Department's position that this statement is not accurate in any event. Almost every Federal and State dollar that is spent on prevention in this Commonwealth passes through the Commonwealth and counties to prevention providers. The small amount that does not is distributed directly by the Federal government to counties or providers through grants. That grant process requires application to and review by the Federal government and in most cases requires the recipient to have prior prevention experience. Thus, the funding processes contain the necessary checks and balances to ensure that unqualified operators do not receive funds, spend them inappropriately and harm the field. As for the remainder of the public dollars, the Department, through its agreements with the counties, currently monitors the services that are being provided, the amounts that are being spent and the results of the services. There is very little chance, if any, that these funds will be provided to individuals or entities that are unscrupulous or unqualified operators.

The second point of the comment suggests that regulations are needed to assure that the "baseline" standard is met. Apparently, it is the thought that this "baseline" can be established by regulation. Again, this assertion is unfounded. Under the current method of funding and delivering prevention services, counties are required to submit plans to the BDAP, which are tailored to the specific needs of the counties. These needs vary from county to county. It is not possible to establish a Statewide "baseline" for prevention services when each geographical region differs in its needs and varies in its approach to the delivery of prevention services. To try to hold the entire State to one minimal standard in prevention actually undermines the objective of prevention as it is defined today.

Rather than enhancing prevention, the deleted regulations undermine the quality and innovation by holding providers to outdated standards. Moreover, the deleted regulations did not regulate every prevention provider. The prevention system that is in place through the agreements between the BDAP and the counties actually enhances prevention by allowing for individualized delivery of services specifically addressing the counties' needs. Prevention has been brought to the forefront of the battle against drug and alcohol addiction by the BDAP funding and monitoring system which may evolve and change as the need arises.

The next point in the comment relates to the workgroup. The workgroup first met in the Spring of 1998 and met regularly thereafter for 2 years. It has not met since the Spring of 2000. The purpose of the workgroup was to establish minimal criteria for the provision of prevention services. Accomplishing this objective is not dependent on the deleted regulatory scheme. The deleted regulations were not effective or useful and served no practical or functional purpose in advancing the cause of prevention. Therefore, maintaining them would have served no legitimate purpose irrespective of whether an "alternative" has been established. Maintaining outdated regulations, which are used to approve only a small number of entities actually providing preventive services, would only continue to divert valuable and limited public resources away from other necessary areas of regulation and reduce the overall effectiveness of those public resources.

The next part of this comment discusses resources for implementation of "whatever alternative is established." That alternative is already established and resources have already been transferred to accommodate this system. The current process of monitoring prevention is performed by the BDAP and the SCAs through the funding processes. Personnel are already engaged in this work at both the State and local levels. The processes will continue, as they are now, with no further "shift in costs" necessary when the regulations are rescinded. The rescission of the regulations will not have any measurable fiscal impact on the Commonwealth, local government, the private sector or the general public. Even if there is a shift in costs as alleged, that shift would be just that. It would be a shift or reallocation, not an increase. Thus, again, there still would be no measurable fiscal impact. Dollars spent by the Department and the SCAs will, however, be used in a way that will yield better results.

The last point in the comment restates those previously made and already addressed. Whether adjustments to the current funding system will require new staff, which the Department believes will not be the case, and whether independent certification will eliminate grass-roots nonprofit organizations, which the Department believes should not be the case, these issues are not a function of

the repeal of ineffective regulations. The deletion does not affect these concerns one way or the other. As discussed previously, the lack of regulation in no way puts large amounts of taxpayer funds at risk of ineffective use. The current oversight system in place adequately protects against any alleged risks.

All of the commentators are in agreement with the Department that the regulations the Department is deleting need to be deleted. The disagreement is whether there is a need to replace them with new regulations. New regulations are not necessary. Upgrading the regulatory scheme, as opposed to terminating the regulatory scheme, would be inconsistent with the objectives and goals articulated in Executive Order 1996-1.

The prevention services delivery system currently in place through agreement between the Department and the SCAs is quite extensive. To receive the Federal and State prevention funds, the SCAs are required to comply with the contractual provisions of their agreements with the Department. This is the most effective system for the Department to monitor and influence the delivery of prevention services in this Commonwealth.

*Fiscal Impact*

The deletion of the regulations for approval of drug and alcohol abuse prevention and intervention activities will have no measurable adverse fiscal impact on the Commonwealth, local government, the private sector or the general public. The major issues of concern raised by comments were increased personnel costs and risk of public dollars being spent ineffectively. These concerns are not substantiated. With the current prevention system, which operates through agreements between the BDAP and the local authorities, the State and local personnel are already in place. The deletion of the regulations will not cause an increase in personnel requirements. The deletion of the regulations will decrease costs of regulatory compliance by providers, thereby allowing them to reallocate their resources to other areas, such as the provision of additional prevention services.

Additionally, the Commonwealth will be able to redirect its limited regulatory resources to areas needing greater regulatory oversight and achieve a more efficient use of those resources.

E. *Paperwork Estimate*

A prevention service monitoring system is already in place through the BDAP. Therefore, there will be no additional paperwork requirements for the Commonwealth, local governments or the private sector resulting from the deletions of the regulations. There will be a decrease in paperwork resulting from the discontinuation of the approvals. Applications for approval will be eliminated, as will the paperwork relating to the annual reviews.

F. *Effective Date/Sunset Date*

The deletion of the regulations will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking. No sunset date is necessary. The Department will monitor the effectiveness of retained regulations and alternative initiatives on an ongoing basis.

G. *Statutory Authority*

The Department was authorized by the General Assembly under Reorganization Plan No. 2 of 1977 (71 P. S. § 751-25), Reorganization Plan No. 4 of 1981 (71 P. S. § 751-31) and the Pennsylvania Drug and Alcohol Abuse Control Act (71 P. S. §§ 1690.101—1690.115) (Act 63), to assume the functions and responsibilities of the Governor's Council on Drug and Alcohol Abuse (Council). The Council's authority to regulate and promulgate rules and regulations was transferred to the Department through those reorganization plans. See Reorganization Plan No. 2 of 1977 (transferring duties under the Public Welfare Code with regard to regulation, supervision and licensing of drug and alcohol facilities to the Council), Reorganization Plan No. 4 of 1981 (transferring the functions of the Council to the Department and establishing the Council as an advisory council) and the 1985 Amendments to Act 63, as amended by act of December 20, 1985 (P. L. 529, No. 119) (amending Act 63 to reference the Pennsylvania Advisory Council on Drug and Alcohol Abuse). This final-form rulemaking was promulgated under these provisions.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 11, 2001, the Department submitted a copy of the proposed rulemaking to IRRC and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on May 1, 2002, this final-form rulemaking was deemed approved by the Committees. IRRC met on May 9, 2002, and approved this final-form rulemaking in accordance with section 5.1 (e) of the Regulatory Review Act. The Office of Attorney General approved this final-form rulemaking on June 14, 2002.

I. *Contact Person*

Questions regarding this final-form rulemaking may be submitted to John C. Hair, Director, Bureau of Community Program Licensure and Certification, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665. Persons with a disability may also submit questions regarding the final-form rulemaking by using V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT]. Persons with a disability who need this document in an alternative format (that is, large print, audio tape or Braille) should contact John Hair so that necessary arrangements may be made.

*Findings*

The Department finds that:

(1) Public notice of intention to adopt regulations 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate.

*Order*

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

(a) The regulations of the Department are amended by deleting 4 Pa. Code §§ 259.1 and 259.2 and 28 Pa. Code §§ 701.13 and 713.1—713.5, 713.11—713.18, 713.21—713.29 and 713.41—713.43; and by amending 28 Pa. Code § 701.1 to read as set forth in Annex A.

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

(c) The Secretary of Health shall submit this order, Annex A, a Regulatory Analysis Form and a Repeal Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.

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

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

ROBERT S. ZIMMERMAN, Jr.,
*Secretary*

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 2646 (May 25, 2002).)

**Fiscal Note**: Fiscal Note 10-164 remains valid for the final adoption of the subject regulations.

## Annex A

## TITLE 4. ADMINISTRATION

## PART XI. GOVERNOR'S COUNCIL ON DRUG AND ALCOHOL ABUSE

## CHAPTER 259. (Reserved)

**§ 259.1. (Reserved).**

**§ 259.2. (Reserved).**

## TITLE 28. HEALTH AND SAFETY

## PART V. DRUG AND ALCOHOL FACILITIES AND SERVICES

## CHAPTER 701. GENERAL DEFINITIONS

## Subchapter A. DEFINITIONS

### § 701.1. General definitions.

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

*Act*—The Pennsylvania Drug and Alcohol Abuse Control Act (71 P. S. §§ 1690.101—1690.115).

*Active client*—A client in any phase of treatment.

*Administration activity*—The provision of planning, organizing, funding and control of the SCA drug and alcohol program.

*Aftercare plan*—A plan for clients to follow after they leave formal treatment. It is the client's individual plan for the future, including an identification of the client's personal goals and objectives.

*Budgeted capacity*—The maximum number of active clients a project is funded to treat for each activity or activity/approach combination.

*Caseload*—The number of clients who are receiving direct counseling services on a regular basis at least twice per month. The number of clients does not include clients who are seen by a counselor only for intake evaluations.

*Case management*—An organized system of coordinative activities developed and administered by the SCA to ensure client continuity of service, efficient and effective utilization of available resources, and appropriateness of service to meet the needs of the client.

*Certificate of compliance*—A certificate which indicates that the Department has found a drug and alcohol treatment activity, which is part of a health care facility, to be in full or substantial compliance with standards established by the Department.

*Client*—An individual who is or has been the recipient of the services of a project. A client may be receiving drug services, alcohol services, or both.

*Client records*—The medical, psychological, social, occupational and financial data obtained as part of the diagnosis, classification and treatment of a client.

*Clinical supervisor*—The director of treatment services who supervises counselors and counselor assistants and who meets the education and experience requirements in Chapter 704 (relating to staffing requirements for drug and alcohol treatment activities).

*Close supervision*—Formal documented case review and an additional hour of direct observation by a supervising counselor or a clinical supervisor once a week.

*Correctional institution activity*—The provision of drug or alcohol services within or under the jurisdiction of a State or county correctional facility.

*Counselor*—An individual who provides a wide variety of treatment services which may include performing diagnostic assessments for chemical dependency, developing treatment plans, providing individual and group counseling and other treatment modes and who meets the education and experience requirements in Chapter 704.

*Counselor assistant*—An entry level position for an individual without counseling experience who provides treatment services under the direct supervision of a trained counselor or clinical supervisor. This individual shall complete a structured supervision and training program as delineated in §§ 704.9 and 704.11(g) (relating to supervision of counselor assistant; and staff development program). The length of time spent in assistant status is dependent upon previous education and clinical experience and satisfactory completion of the performance evaluation completed during the assistant status.

*Department*—The Department of Health of the Commonwealth.

*Department-approved curriculum*—Training courses developed or funded by the National Institute on Drug Abuse (NIDA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the Office for Substance Abuse Prevention (OSAP), the Department or other Federal or State agencies.

*Detoxification approach*—The process whereby a drug- or alcohol-intoxicated or dependent client is assisted through the period of time necessary to eliminate, by metabolic or other means, the presence of the intoxicating substance or dependency factors, while keeping the physiological or psychological risk to the client at a minimum. This process should also include efforts to motivate and support the patient to seek formal treatment after the detoxification process.

*Direct observation*—In person observation of staff working in a clinical setting for the purpose of planning, oversight, monitoring and evaluating their activities.

*Driving under the influence activity*—The provision of services aimed at the reduction of alcohol related motor vehicle offenses through education, information and consultation; identification of individuals in need of treatment; and referral to other resources.

*Drug*—A substance:

(i) Recognized in the official or supplement to either the United States Pharmacopeia or official National Formulary.

(ii) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals.

(iii) Other than food, intended to affect the structure or function of the body of man or other animals.

(iv) Intended for use as a component of any article specified in subparagraph (i), (ii) or (iii), but not including devices or their components, parts or accessories.

*Drug and alcohol specialist*—The administrator of a drug and alcohol planning council.

*Drug dependent person*—A person who is using a drug, controlled substance or alcohol, and who is in a state of psychic or physical, or both, dependence arising from administration of that drug, controlled substance or alcohol, on a continuing basis.

*Drug free approach*—The provision of guidance, advice, and psychological treatment as a means to deal with the client's emotional structure and concurrent problems without the use of a maintenance substance. Temporary medication for treatment of physiological conditions or as an adjunct to psychosocial treatment may be utilized in this approach.

*Drug screening*—A clinical test to detect a drug or its metabolities in human biological fluid.

*Dynamic capacity*—The maximum number of clients that can be treated in 1 year in each activity or activity/approach combination.

*Evaluation activity*—The systematic collection, analysis and interpretation of objective data pertaining to the measurement of success in achieving goals and objectives or to the development of a needs assessment.

*Executive director*—The administrator of a drug and alcohol commission.

*Experimental approach*—An innovative treatment approach not generally utilized for treatment of drug and alcohol clients.

*Facility*—The physical location in which ongoing, structured and systematic drug and alcohol services are delivered. A facility may have more than one activity.

*Facility director*—The administrator of the treatment facility who is responsible for the overall management of the facility and staff and who meets the education and experience requirements in Chapter 704.

*Follow-up*—The procedure by which a project determines the status of a client who has been referred to an outside service provider for services or who has been discharged from the project.

*Freestanding treatment facility*—The setting in which drug and alcohol treatment services take place that is not located in a health care facility.

*Governing body*—The persons with full legal responsibility for the overall operation of the project.

*Health care facility*—

(i) A general, tuberculosis, chronic disease or other type of hospital—but not hospitals caring exclusively for the mentally ill—a skilled nursing facility, home health care agency, intermediate care facility, ambulatory surgical facility or birth center—regardless of whether the health care facility is created for profit, nonprofit, or by an agency of the Commonwealth or local government.

(ii) The term does not include an office used primarily for the private practice of medicine, osteopathy, optometry, chiropractic, podiatry or dentistry; nor a program which renders treatment or care for drug or alcohol abuse or dependence, unless located within a health facility; nor a facility providing treatment solely on the basis of prayer or spiritual means.

(iii) The term does not include a mental retardation facility except to the extent that it provides skilled nursing care.

(iv) The term does not apply to a facility which is conducted by a religious organization for the purpose of providing health care services exclusively to clergymen or other persons in a religious profession who are members of a religious denomination.

*Inpatient hospital activity*—The provision of detoxification or treatment and rehabilitation services, or both, 24 hours a day, in a hospital. The hospital shall be licensed by the Department as an acute care or general hospital, or approved by the Department of Public Welfare as a psychiatric hospital.

*Inpatient nonhospital activity*—A nonhospital, residential facility, providing one of the following drug and alcohol services:

(i) Residential treatment and rehabilitation services.

(ii) Transitional living services.

(iii) Short-term detoxification.

*Intake, evaluation and referral activity*—The provision of intake and referral by a facility designated by the SCA to perform those services centrally for two or more facilities within that SCA.

*Intervention level*—The provision of services aimed at assisting the client in coping with a specific crisis or other situation in his life for which his customary modes of adaptation have proved inadequate. This level is aimed at assisting in decision making and supporting the client until he can cope with the situation independently. Referral is provided if the need for a structured treatment regimen or other services is indicated.

*Joinder*—A drug and alcohol administrative unit whose geographic area consists of two or more counties.

*License*—A certificate which indicates that the Department has found a freestanding treatment facility to be in full or substantial compliance with standards established under this part.

*Local authority*—The elected executive officials of a county.

*Long-term residential facilities*—Facilities where the average length of stay exceeds 90 days.

*Maintenance approach*—The prescription of methadone or other Department approved substance in sufficient doses to achieve stabilization or prevent withdrawal symptoms. This approach differs from the drug free approach in that a maintenance substance is utilized throughout the treatment regimen. Slow withdrawal or

outpatient detoxification of the client from the maintenance substance is considered as a part of maintenance. The ultimate goal of maintenance is to assist the client in permanently discontinuing the use of dependency producing substances.

*Maintenance substance*—Methadone or other Department approved substance used in sufficient doses to achieve stabilization or prevent withdrawal symptoms.

*Medication*—A prescription drug ordered by a licensed physician.

*MH/MR administrator*—The person appointed by the local authority to carry out duties, as provided in the Mental Health and Mental Retardation Act of 1966 (50 P. S. §§ 4101—4704), within a county MH/MR Program.

*Nonresidential facility*—A facility that does not provide sleeping accommodations and provides one or more of the following activities: outpatient, partial hospitalization, intake, evaluation or referral activities.

*Occupational program activity/employee assistance programs*—The provision of consultation, education, training and referral services to industry to assist employees whose job performance is deteriorating due to substance abuse.

*Other chemotherapy approach*—A treatment approach that includes chemotherapy using a primary medication for other than detoxification purposes. The term implies continued doses of medication. If a client receives only short-term medication for temporary symptomatic relief, the client is entered under the drug free or the detoxification approach, as appropriate.

*Outpatient activity*—The provision of counseling or psychotherapeutic services on a regular and predetermined schedule. The client resides outside the facility.

*Outreach*—Identifying persons who are in need of services, and alerting them to the availability and location of the services.

*Paraprofessional*—An individual, currently serving in a clinical capacity in a drug or alcohol treatment intervention or prevention project, whose performance closely relates to the technical or ethical standards normally ascribed to a professional.

*Partial hospitalization activity*—The provision of psychiatric, psychological, social and other therapies on a planned and regularly scheduled basis. Partial hospitalization is designed for those clients who would benefit from more intensive services than are offered in outpatient treatment projects, but who do not require 24-hour inpatient care.

*Performance audit*—An examination of the total fiscal and program operations of the SCA and its drug and alcohol projects.

*Physician*—An individual licensed under the statutes of the Commonwealth to engage in the practice of medicine and surgery, in its branches, or in the practice of osteopathy or osteopathic surgery, as defined in 1 Pa.C.S. § 1991 (relating to definitions).

*Planning council/executive commission*—A body of individuals appointed to plan, approve and coordinate the county drug and alcohol program.

*Primary care hours*—The primary hours of operation during which primary care services are provided as established by the facility and approved by the Department.

*Primary care services*—Medical, psychological, counseling and support services provided by primary care staff in a treatment and rehabilitation activity as defined in this chapter.

*Primary care staff*—The group of individuals, including clinical supervisors, counselors, physicians, physician's assistants, psychologists, registered nurses and licensed practical nurses who provide primary care services and those individuals who are responsible for developing and implementing the treatment plan.

*Program*—The aggregate of drug and alcohol projects under the jurisdiction of an SCA. This aggregation may be by type (SCA alcohol program), by level (SCA prevention program) or may include drug and alcohol projects (SCA drug and alcohol program).

*Project*—The public or private organization responsible for the administration and delivery of drug or alcohol services, or both, through one or more facilities. A project is a component of an SCA drug and alcohol program.

*Project appoval*—The process for determining a project's compliance with published standards and certifying that the project is in compliance.

*Project director*—The administrator of the treatment project who is responsible for the overall management of the project and staff and who meets the education and experience requirements in Chapter 704.

*Project staff*—Persons performing the activities necessary for the operation of the project or facility.

*Psychologist*—A person licensed to practice psychology under the Professional Psychologists Practice Act (63 P. S. §§ 1201—1218).

*Residential facility*—An inpatient, nonhospital facility or inpatient freestanding psychiatric hospital that provides sleeping accommodations and provides one or more of the following activities: residential treatment and rehabilitation services, transitional living services or short-term detoxification services, 24 hours a day.

*SCA—Single County Authority*—The agency designated by the local authorities in a county or joinder to plan, fund and administer drug and alcohol activities in that county or joinder. The SCA consists of the planning council/executive commission, the specialist/executive director, and, in the case of the planning council option, the MH/MR administrator. The local authorities are the final fiscal and management authority.

*SCA level*—Those activities conducted by the SCA which do not involve direct contact with clients or participants.

*SCA plan*—The annual drug and alcohol prevention, intervention and treatment plan of the SCA.

*Secretary*—The Secretary of the Department.

*Short-term detoxification activity*—The provision of detoxification services in a residential facility, not to exceed 7 days.

*Training activity*—The provision of necessary education and experience used to prepare those who will work or are currently working in the drug or alcohol field.

*Transitional living activity*—The provision of supportive services in a semiprotected home-like environment to assist a client in his gradual reentry into the community. No formal treatment—counseling/psychotherapy—takes place at the facility. This is a live-in/work-out situation.

*Treatment*—Activities carried out specifically to effect the reduction or alleviation of the dysfunctions or disability of the client.

*Treatment and rehabilitation activity*—Following the physiological detoxification phase, a full range of treatment and supportive services carried out specifically to alleviate the dysfunction of the patient. This includes the systematic application of social, psychological or medical service methods to assist individuals to deal with the causative effects or consequences of drug or alcohol abuse. These services can be provided either in a hospital or residential nonhospital setting licensed/approved by the Department.

*Treatment level*—The activities aimed at the systematic application of social, psychological or medical service methods to assist individuals to deal with negative effects or consequences of drug and alcohol use or abuse.

*UDCS*—Uniform Data Collection System—Includes the client management facet, the fiscal management facet, and the program management facet set of forms developed and maintained by the Department.

**§ 701.13. (Reserved).**

**CHAPTER 713. (Reserved)**

**Subchapter A. (Reserved)**

**§§ 713.1—713.5. (Reserved).**

**Subchapter B. (Reserved)**

**§§ 713.11—713.18. (Reserved).**

**Subchapter C. (Reserved)**

**§§ 713.21—713.29. (Reserved).**

**Subchapter D. (Reserved)**

**§§ 713.41—713.43. (Reserved).**

[Pa.B. Doc. No. 02-1168. Filed for public inspection July 5, 2002, 9:00 a.m.]

# Title 4—ADMINISTRATION

## NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS NAVIGABLE TRIBUTARIES

## [4 PA. CODE CHS. 401—403 AND 405]

## Navigation Licensure and Renewal

The Navigation Commission for the Delaware River and its Navigable Tributaries (Commission) amends Chapters 401—403 and 405. These amendments revise and update four of the six chapters of the Commission's regulations in the first revision of the regulations since 1977.

I. *Statutory Authority*

The Commission has authority to promulgate regulations under section 4 of the act of March 29, 1803 (P. L. 542, 4 Sm.L. 67) (55 P. S. § 31); and section 2504-B(4) of The Administrative Code of 1929 (71 P. S. § 670.2(4)).

II. *Responses to Comments*

The notice of proposed rulemaking was published at 30 Pa.B. 3179 (June 24, 2000) and was subject to a 30-day public comment period. The Commission received no public comments. The House Professional Licensure Committee (HPLC) filed its comments on August 11, 2000. The Independent Regulatory Review Commission (IRRC) filed its comments on August 24, 2000. Because the Preamble for the proposed rulemaking was previously printed in the *Pennsylvania Bulletin* and described the amendments in detail, this Preamble will only address the amendments that the Commission made as a result of the comments that the HPLC and IRRC provided, and changes to the statute made on these same subjects in May and June of 2001.

The comments made by the HPLC related to the validity or reliability of proposed procedural changes, or both, as well as consistency with statutory provisions. The comments made by the HPLC are addressed in the particular amendments to the regulations, as referenced in this Preamble.

The comments made by IRRC related to clarity, reasonableness, implementation procedure, consistency and statutory authority. These comments are noted in specific amendments to the regulations, as referenced in this Preamble.

III. *Purpose*

These amendments enhance the navigational safety on the Delaware River through the implementation of requirements for state-licensed pilots, such as random drug testing, continuing education, special training in bridge resource management and automatic radar plotting aids, as well as mandatory pilotage trips to maintain current knowledge of river conditions (recency-of-route). The amendments eliminate regulations which are obsolete because of statutory changes affecting the Commission and state-licensed pilots or which are unnecessary because their subject matter is adequately covered by statute.

The amendments on final rulemaking also give those regulations retained by the Commission better organization and clarity. A description of the revisions and changes appears as follows:

IV. *Responses to Statutory Changes*

The amendments also articulate those changes made by the General Assembly and signed into law in 2001. The act of June 22, 2001 (P. L. 582, No. 41) (Act 41) restates the membership of the Commission, as previously designated in section 475(a) of The Administrative Code of 1929 (71 P. S. § 180.5(a)), and removes the requirement that the principal office of the Commission be in Philadelphia. This change is discussed further in Section V, § 401.2 (relating to Commission office), of this Preamble. Act 41 also provides for the Commission's meetings to be held in Philadelphia or at a location determined by a majority vote of the Commission. Additionally, Act 41 requires public notice of the time and place of the Commission's meetings to comport with 65 Pa.C.S. Chapter 7 (relating to Sunshine Law). These changes are discussed in Section V, § 402.11 (relating to meetings), of this Preamble.

The act of May 17, 2001 (P. L. 98, No. 11) (Act 11) changed the reporting requirement to a recordkeeping requirement for those pilots who train an apprentice. This change is discussed further in Section V, § 405.9(b) (relating to apprentices), of this Preamble.

V. *Description of Revisions*

*Chapter 401 (relating to general provisions)*

*§ 401.2 (relating to Commission office)*

Section 401.2 includes the full address for the Commission's office including state and zip code in accordance with IRRC's suggestion. At the suggestion of IRRC, the

Commission also designated this office as the location where potential applicants can obtain all necessary forms. When Act 11 removed the requirement that the principal office of the Commission must be in Philadelphia, the Commission designated the Department of State (Department) in Harrisburg as its office.

*Chapter 402 (relating to administration)*

*§ 402.11 (relating to meetings)*

A new subsection (c) provides for the Commission's meetings to be held in Philadelphia or at a location determined by a majority vote of the Commission, as authorized by Act 41.

*Chapter 405 (relating to pilots and pilotage)*

*§ 405.3 (relating to application for licensure or apprenticeship)*

At the suggestion of IRRC, the Commission inserted the address and phone number of the Department (the Commission's administrative office), and clearly designated this as the location where potential applicants can obtain all necessary forms.

*§ 405.4 (relating to examination for sixth-class license)*

The Commission articulated, with specificity, the precise format and requirements for passage of the entry-level oral or written examination, as suggested by both the HPLC and IRRC. The initial examination, administered by three first-class pilots designated by the Commission, consists of four parts: (i) rules of the road; (ii) chart work; (iii) shiphandling and anchoring; and (iv) local knowledge. A passing grade is set as obtaining 90% of the questions correct on parts (i) and (ii) and 80% correct on parts (iii) and (iv). The written examinations will consist of at least 50 questions on each part, except for chart work. On the chart work portion of the examination, an apprentice is given a blank chart to place labels appropriately for landmarks such as channel depths, shoals, rocks, obstructions, buoys, range lights, overhead bridge clearances, specific geographic features and anchorages.

Regarding the validation of the examination, most of the questions on rules of the road come from the United States Coast Guard (USCG). The source for the information on chart work comes from chart publications of the USCG and the National Oceanographic and Atmospheric Administration (NOAA). The questions on shiphandling and anchoring come from the pilots and relevant textbooks. Local knowledge questions come from the quarterly subjects that the apprentices study, including instructions from the licensed pilots, as well as local regulations and guidelines, along with publications of the USCG, NOAA, the United States Army Corps of Engineers and the Mariners Advisory Committee of the Port of Philadelphia.

If an applicant does not successfully pass on the first attempt, this final-form rulemaking provides for additional opportunities for an applicant to pass the written exam. An oral examination, which is recorded and filed with the Commission, may be administered if an applicant's existing medical condition so requires. After three examinations, the Commission may determine if additional examination opportunities may be provided to the applicant. In addition, the original copies of all written examinations are filed with the Commission as part of its permanent records.

*§ 405.5 (relating to classification of pilots)*

To facilitate reference to the applicable statutory provision designating the classes of pilots and defining them as suggested by IRRC, § 405.5 lists the appropriate citation as "section 17 of the act of March 29, 1803 (P. L. 542, Sm.L. 67) (55 P. S. § 42(a))."

*§ 405.7 (relating to qualifications for license)*

Section 405.7(a)(3) strikes the phrase "any cause" and replaces it with the specific criteria of when a physical examination may be ordered by the Commission, as suggested by IRRC. In this same paragraph, the Commission added the term "applicant," addressing IRRC's suggestion by clarifying that this section applies to both initial applicants and to pilots who renew their licenses. Also, the Commission believes that the second sentence in subsection (a)(3) should remain in § 405.7 because it is a major qualification for licensure. A reference to § 405.8 (relating to physical examination qualifications) is provided in the first sentence of subsection (a)(3). Furthermore, § 405.12 (relating to renewal of license) references this and other subsections of § 405.7. Finally, at the suggestion of IRRC, the Commission included as an option the submission of the current or successor form of the "Merchant Marine Personnel Physical Examination Report" of the USCG as proof of a physical examination.

In subsection (a)(4), the Commission made several changes to this final-form rulemaking, as suggested by IRRC. First, the Commission added a procedure in which the random drug testing will be conducted by a testing agency satisfactory to the Commission. Second, a pilot who tests positive for the presence of drugs shall be immediately reported to the Commission. Finally, all other test results shall be filed with the Commission prior to March 1 of each year. This verifies compliance and clarifies what documentation is required and where it is to be filed.

As suggested by IRRC, subsection (a)(9) references § 405.15 (relating to initial license and license renewal fee), which sets the applicable license fee.

Subsection (c) references § 405.4, which relates to the specific examination requirements necessary to obtain a pilot's license and addresses the details concerning the exam's format, which was a question raised by IRRC. Section 405.4 contains precise language expressing what is considered a "passing grade," what is done if an applicant fails the examination, the circumstances under which additional examinations may be administered, and the conditions in which oral examinations may be given.

*§ 405.8 (relating to physical examination qualifications)*

At the suggestion of the HPLC, the United States standard system of visual acuity replaced the metric system as the means of measurement, and the term "examination" was added to the heading of § 405.8. The Commission also amended this section to include the use of information provided in the current or successor form of the "Merchant Marine Personnel Physical Examination Report" of the USCG to determine the presence of any medical condition that may directly affect one's ability to pilot a ship safely, as suggested by IRRC.

*§ 405.9 (relating to apprentices)*

To determine if an applicant is of "good moral character," the Commission added specific provisions to subsection (a)(1), as suggested by IRRC, including: letters of reference, questions regarding the criminal record of the applicant on application forms and information within the

possession of the USCG since some applicants may have obtained a USCG license, as provided in subsection (a)(2)(ii).

Section 405.9(a)(3)(ii) was amended to refer to vessels of 1,600 tons to track the statutory language in section 17(b) of the act of March 29, 1803. Tracking the statutory language was also an issue in subsection (b)(1). The HPLC and IRRC suggested that the language of subsection (b)(1) should be consistent with the enabling statute (section 17(b) of the act of March 29, 1803). The Commission added language to subsection (b)(1) that mirrors the enabling statute, stating that an apprentice who, "at the time of appointment, holds at least a third mate's license need be an apprentice no longer than 3 years."

At the suggestion of IRRC, the Commission clarified the requirements under subsection (b)(4) of how many and at what intervals reports are required to be filed by pilots who train apprentices. This final subsection, in accordance with Act 11, requires pilots to maintain an activity record of each trip on an apprentice's weekly activity record. The final subsection also articulates the specific information that shall be incorporated with the apprentice's weekly activity record including: the date of the trip; the name of the vessel; where the trip began and ended; and any other information requested by the Commission. In addition to the weekly activity records, at least one pilot evaluation of each apprentice's performance shall be filed on a quarterly basis with the joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator. An exception for the required evaluation is made for the first two quarters of an apprentice's program because during that initial time frame, the apprentice is primarily observing the piloting of vessels, so there are not sufficient opportunities to evaluate the apprentice's performance. The Commission placed in subsection (b)(5) the requirement that the joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator report to the Commission, at each meeting, the activities and performance of the Pennsylvania apprentices in the program.

*§ 405.12 (relating to renewal of license)*

At the suggestion of IRRC, § 405.12 references § 405.15 for payment of the required license renewal fee.

*§ 405.19a (relating to docking, undocking and anchoring of vessels)*

At the suggestion of IRRC, the Commission deleted any reference to Delaware state-licensed pilots from the language of § 405.19a. The reference to Pennsylvania was deleted for clarity to remain consistent with the terminology used elsewhere to refer to state-licensed pilots.

*§ 405.21 (relating to accident reports)*

The Commission inserted the language "within 5 days of the accident" to describe the length of time a pilot has to submit a written report of an accident, as suggested by IRRC. The Commission also altered the provision to read, "a pilot involved in a marine accident while on duty . . . " to clarify this point, as suggested by IRRC. Also at the suggestion of IRRC, the required number to make a telephonic report is clearly stated as the number listed at the issuance of each license or on the annual license renewal notice. This number is (717) 783-7200, which is the primary extension of the Department's Bureau of Professional and Occupational Affairs. This number is staffed by an operator at all times during normal business hours and has voice-mail capabilities at all other times, including weekends.

VI. *Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1, "Regulatory Review and Promulgation," the Commission invited comments from the regulated community and interested parties. In drafting the proposed rulemaking, the Commission had extensive consultations with, and input from The Pilots' Association for the Bay and River Delaware, a business association representing the interests of all state-licensed pilots in this Commonwealth and Delaware. In addition, the Commission consulted with the American Pilots' Association, the USCG and the National Transportation Safety Board. When the rulemaking was proposed, the Commission received no public comments.

VII. *Fiscal Impact*

The final-form rulemaking promulgated by the Commission will have no measurable fiscal impact on the Commonwealth, its political subdivisions or the private sector because fees paid by licensees support the Commission. The changes are in harmony with current Federal regulations and recommendations as well as with stricter regulations now present in Delaware. Although these changes will not have a substantial fiscal impact because Pennsylvania pilots have already implemented many of them, there may be a minimal fiscal impact, which cannot be calculated at this time.

VIII. *Paperwork Requirements*

This final-form rulemaking will require the Commission to update its license renewal forms and its application forms for pilot's licenses and for apprentice appointments. However, this final-form rulemaking does not create new paperwork for other agencies of the Commonwealth, political subdivisions of the Commonwealth or the general public.

IX. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 14, 2000, the Commission submitted a copy of the proposed rulemaking to IRRC, the Senate Consumer Protection and Professional Licensure Committee and the HPLC.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when required. In preparing this final-form rulemaking, the Commission has considered comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on May 7, 2002, this final-form rulemaking was approved by the HPLC and deemed approved by the Senate Consumer Protection and Professional Licensure Committee on May 21, 2002. IRRC met on May 30, 2002, and approved the final-form rulemaking under section 5.1(e) of the Regulatory Review Act.

X. *Contact Person*

Interested persons may contact Louis Lawrence Boyle, Deputy Chief Counsel, Department of State and Counsel to the Navigation Commission for the Delaware River and its Navigable Tributaries, 302 North Office Building, Harrisburg, PA 17120-0029.

XI. *Findings*

The Commission 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, 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) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 30 Pa.B. 3179.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in this Preamble.

XII. *Order*

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

(a) The regulations of the Commission, 4 Pa. Code Chapters 401—403 and 405, are amended by amending §§ 401.1, 401.2, 402.4, 402.11, 405.3—405.5, 405.7—405.12 and 405.21; by adding § 405.19a; and by deleting §§ 402.5, 402.9, 402.10, 403.1—403.5, 403.11—403.14, 403.21—403.25, 405.2, 405.6, 405.14, 405.16—405.18, 405.27—405.29, 405.31 and 405.33 to read as set forth in Annex A.

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

(c) The Commission 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*.

C. MICHAEL WEAVER,
*Secretary of the Commonwealth*
*Chairperson of the Commission*

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 2954 (June 15, 2002).)

**Fiscal Note**: Fiscal Note 16A-662 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART XIII. NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS NAVIGABLE TRIBUTARIES**

**CHAPTER 401. GENERAL PROVISIONS**

**§ 401.1. Definitions.**

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

*Chairperson*—The Chairperson of the Commission.

*Commission*—The Navigation Commission for the Delaware River and its navigable tributaries.

*Department*—The Department of State of the Commonwealth.

*Navigable tributaries*—Tidal portions of the navigable tributaries are defined as follows:

(i) Schuylkill River below Fairmount Dam.

(ii) Chester Creek below Ninth Street.

(iii) Crum Creek below Route 291 (Industrial Highway) bridge.

(iv) Darby Creek below 84th Street.

(v) Neshaminy Creek below Route 13 bridge.

(vi) Pennypack Creek below Frankford Avenue Bridge.

(vii) Ridley Creek below Baltimore and Ohio Railroad Bridge in Chester.

*River*—Tidal portions of the Delaware River, from the Delaware border in the South to the Railroad Bridge at Morrisville in the North, and its navigable tributaries within this Commonwealth.

*Secretary*—The Secretary of the Commonwealth.

**§ 401.2. Commission office.**

The office of the Commission is located at the Department of State, 302 North Office Building, Harrisburg, Pennsylvania 17120-0029. Forms may be obtained from the Department or by calling (717) 787-6802.

**CHAPTER 402. ADMINISTRATION**

**§ 402.4. Department of State Commission.**

The Commission will be a departmental commission of the Department.

**§ 402.5. (Reserved).**

**§ 402.9. (Reserved).**

**§ 402.10. (Reserved).**

**§ 402.11. Meetings.**

(a) The regular meetings of the Commission will be held semiannually after public notice as required by 65 Pa.C.S. Chapter 7 (relating to Sunshine Act).

(b) Special meetings may be called by the Chairperson after 3 days notice to the Commission and after public notice as required by 65 Pa.C.S. Chapter 7.

(c) Meetings of the Commission will be held in Philadelphia or at a location determined by a majority vote of the Commission.

**CHAPTER 403. (Reserved)**

**§§ 403.1—403.5. (Reserved).**

**§§ 403.11—403.14. (Reserved).**

**§§ 403.21—403.25. (Reserved).**

**CHAPTER 405. PILOTS AND PILOTAGE**

**§ 405.2. (Reserved).**

**§ 405.3. Application for licensure or apprenticeship.**

An applicant for initial issuance of a pilot's license, for renewal of a pilot's license or for appointment as an apprentice shall submit an application on a form provided by the Commission. Forms may be obtained from the Department of State, 302 North Office Building, Harrisburg, Pennsylvania 17120 or by calling (717) 787-6802.

**§ 405.4. Examination for sixth-class license.**

(a) The Commission will designate at least three first-class pilots to conduct or develop an oral or written examination of an applicant for a sixth-class pilot's license for the purpose of ascertaining the applicant's fitness to perform the duties of a pilot. The Commission will fix the date, time, manner and place of the examination.

(b) Applicants for a sixth class license shall pass an initial written examination that is comprised of the following four parts:

(1) Rules of the road.

(2) Chart work.

(3) Shiphandling and anchoring.

(4) Local knowledge.

(c) A passing grade on the parts in subsection (b)(1) and (2) is 90%, and a passing grade on the parts in subsection (b)(3) and (4) is 80%. The written examinations will consist of at least 50 questions on each part except chart work. Applicants who do not attain a passing score on any part of the initial exam shall be given another written examination on that part that the applicant did not pass. If an applicant fails to pass the second written examination on any part, the applicant shall be given a third written examination on that part that the applicant did not pass. When an applicant is unable for a medical reason, such as dyslexia, to successfully pass two different written examinations, the Commission may approve an oral administration of the examination. After three examinations, the Commission may determine if additional examination opportunities will be provided to any applicant. The examination for a sixth-class pilot's license may consist of the following topics:

(1) Inland and pilot rules.

(2) Aids to navigation.

(3) Courses, distances and distances passed abeam at change of course points between given points.

(4) Important and essential cable areas.

(5) Dredged channel widths and depths.

(6) Bridge signals, widths, regulations and closing periods.

(7) Ship handling, docking problems, seamanship by actual observation, use of tow boats and anchors.

(8) Regulations of the Commission.

(9) Anchorage locations.

(10) Duties of a pilot.

(11) Relationship between master and pilot.

(12) Practical operation and use of marine radar, including use of maneuvering board.

(13) Currents and tides.

(14) Dock headings, lengths, depths of water alongside, pier locations and berth numbers.

(15) United States Government Public Health Quarantine regulations.

(16) Prohibited areas, restricted areas, explosive anchorages.

(17) Chart knowledge, including chart symbols and abbreviations.

(18) Use of navigational and bridge instruments.

(19) Engine order and rudder commands for the following:

(i) United States Merchant vessels.

(ii) United States Naval vessels.

(iii) Foreign flag merchant vessels.

(20) Ranges for determining error in channel ranges.

(d) Each oral examination shall be tape-recorded, and the original copy of the recording shall be filed with the Commission as part of its permanent records. If a written examination is given, the original copy of the written examination shall be filed with the Commission as part of its permanent records.

**§ 405.5. Classifications of pilots.**

For classifications of pilots, see section 17 of the act of March 29, 1803 (P. L. 542, 4 Sm.L. 67) (55 P. S. § 42).

**§ 405.6. (Reserved).**

**§ 405.7. Qualifications for license.**

(a) An applicant for the initial issuance of a pilot's license in any class shall:

(1) Except for first-time applicants for a sixth class license, have served at least 1 year in each of the license classes below the class of license applied for.

(2) Have complied with subsection (d).

(3) Have passed a physical examination within 6 months of the date of application based on the requirements of § 405.8 (relating to physical qualifications), as evidenced by a physician's statement. As proof of a physical examination, pilots may submit the current or successor form of the "Merchant Marine Personnel Physical Examination Report" of the United States Coast Guard. Physical examinations may also be ordered by the Commission for any pilot or applicant at any time that there is cause to believe that the physical condition of the pilot or applicant may be so impaired as to impact the pilot or applicant's ability to discharge his duties.

(4) Have participated in a program of random drug testing during the preceding calender year that meets the standards of Coast Guard Regulations under 46 CFR Part 16 (relating to chemical testing). The random drug testing shall be performed by a testing agency satisfactory to the Commission. The testing agency conducting this random drug testing shall submit to the Commission documentation of the results immediately for any pilot who tests positive. The testing agency conducting this random drug testing shall submit to the Commission documentation of the results for all other pilots prior to March 1 of each year.

(5) Have been qualified as a radar observer, as evidenced by one of the following:

(i) A radar observer endorsement on a current Federal pilot's license.

(ii) A certificate issued by a Coast Guard-approved authority reflecting that the certificateholder satisfactorily completed a course of instruction for radar observers, within 5 years of the date of application.

(6) Have completed a Commission-approved course in bridge resource management within 3 years of the date of application or renewal.

(7) Have completed a Commission-approved course in automatic radar plotting aids (ARPA) once in a pilot's career.

(8) Post a surety bond that satisfies the requirements of § 405.13 (relating to bonding).

(9) Pay the required license fee, as specified in § 405.15 (relating to initial license and license renewal fee).

(b) In addition to meeting the requirements of subsection (a), a first-time applicant for a first-class pilot's license shall:

(1) Have completed 40 hours of Commission-approved continuing education in navigation, ship handling or

related topics within the preceding 5 years. Courses in the required areas of radar observer, ARPA and bridge resource management may count towards the 40-hour total. The Commission will approve the education facilities that qualify to provide this education. This continuing education requirement becomes effective July 6, 2004.

(2) Have appeared before the Commission for a personal interview.

(c) In addition to meeting the requirements of subsection (a), an applicant for a sixth-class pilot's license shall score a passing grade or better on an examination, as provided in § 405.4(b) (relating to examination for sixth-class license). Prior to taking the examination, the applicant shall:

(1) Be at least 21 years of age.

(2) Be within 3 months of completing a Commission-approved apprenticeship.

(3) Have acquired a current Federal pilot's license for the Delaware River issued by the Coast Guard.

(d) In addition to meeting the requirements of subsection (a), applicants for a pilot's license:

(1) Shall have piloted at least 52 vessels during the preceding license period, if the applicant is a current license-holder, unless waived by the Commission under paragraph (2).

(2) May seek a waiver from the Commission of the requirement of paragraph (1), in whole or in part, for illness, disability or other good cause that prevents a pilot from piloting the required number of vessels. If a waiver is granted, the Commission may condition the issuance of the license on the applicant's completion of refresher trips up or down the river as may be necessary to ensure that the applicant is familiar with current conditions along the route. Refresher trips shall be made in the company of a first-class pilot.

**§ 405.8. Physical examination qualifications.**

The physical qualifications for a pilot or apprentice are as follows:

(1) Visual acuity of 20/30 in one eye and 20/80 in the other—correctable to 20/20 and 20/30, respectively—and normal color perception.

(2) Hearing acuity to the extent of correctly repeating, with eyes closed, words or numbers spoken by the examiner in an ordinary conversational tone of voice from a distance of 20 feet. Each ear shall be tested separately; the ear being tested shall be turned in the direction of the examiner while the other ear is plugged.

(3) The absence of any medical condition that may directly affect one's ability to pilot a ship safely, as noted on the current or successor form of the "Merchant Marine Personnel Physical Examination Report" of the United States Coast Guard.

**§ 405.9. Apprentices.**

(a) *Apprentice qualifications*. An applicant for an apprenticeship as a pilot shall:

(1) Be of good moral character. The Commission may use any of the following methods to determine moral character:

(i) Letters of reference.

(ii) Questions regarding the criminal record of the applicant on application forms.

(iii) Relevant information within the possession of the United States Coast Guard such as any action taken against the applicant's Coast Guard license, if applicable.

(2) Have acquired one of the following:

(i) A baccalaureate degree from a recognized and certified college or university or from a maritime academy operated by the United States or any state.

(ii) A Coast Guard-issued license to serve as a third mate on all oceans aboard vessels of 1,600 tons, or a higher class of license.

(3) Have passed a physical examination within 6 months of the date of application based on the requirements of § 405.8 (relating to physical examinations), as evidenced by a physician's statement.

(b) *Conduct of apprenticeship*. An apprenticeship shall provide the theoretical education and supervised practical experience required for licensure as a sixth-class pilot and shall be conducted as follows:

(1) Every apprentice shall serve an apprenticeship of 4 years, except that an apprentice who, at the time of appointment, holds at least a third mate's license under subsection (a)(2)(ii) need be an apprentice no longer than 3 years.

(2) The theoretical aspect of an apprenticeship shall cover, but not be limited to, the topics in § 405.4 (relating to examination for license).

(3) An apprentice shall make at least 500 trips up or down the river in vessels with a pilot licensed by Pennsylvania or Delaware.

(4) The pilots who train an apprentice shall maintain a record of each trip on the apprentice's weekly activity record with the joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator. Each apprentice's weekly activity record shall include: the date of the trip, the name of the vessel, where the trip began and ended and other information requested by the Commission. At least one pilot who trains an apprentice shall also conduct an evaluation of each apprentice's performance on at least a quarterly basis, except during the first two quarters of the apprentice's program, and shall file the evaluation with the Joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator.

(5) The Joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator shall file summary reports with the Commission at each meeting on the activities and performance of the Pennsylvania apprentices in the apprentice program.

**§ 405.10. Term of license.**

A license shall be for a term of 1 year, subject to renewal by the Commission.

**§ 405.11. Nondiscrimination.**

The Commission will comply with applicable State and Federal laws prohibiting discrimination in licensing or apprenticeship opportunities. A person will not be denied a license, refused an apprenticeship indenture, refused sponsorship for a pilot's license or discriminated against in the provision of pilotage services because of race, religion, national origin, sex or age.

**§ 405.12. Renewal of license.**

(a) An applicant for renewal of a pilot's license in any class shall:

(1) Have satisfied the requirements of § 405.7(a)(1)—(6) and (8) (relating to qualifications for license).

(2) Pay the required renewal fee, as specified in § 405.15 (relating to initial license and license renewal fee).

(b) In addition to meeting the requirements of subsection (a), an applicant for renewal of a first class pilot's license shall have completed 40 hours of Commission-approved continuing education in navigation, ship handling or related topics within the preceding 5 years. Courses in the required areas of radar observer, automatic radar plotting aids (ARPA) and bridge resource management may count towards the 40-hour total. The Commission will approve the education facilities that qualify to provide this education. This continuing education requirement shall become effective July 6, 2004.

**§ 405.14. (Reserved).**

**§§ 405.16—405.18. (Reserved).**

**§ 405.19a. Docking, undocking and anchoring of vessels.**

When a vessel which has taken aboard a state-licensed pilot is docking, undocking or anchoring, the state-licensed pilot shall remain on the bridge, attentive to duty, until the vessel has at least one ship's line secured to the dock or until the vessel is anchored properly and firmly within a designated anchorage area or until the state-licensed pilot is discharged at the pilot station area upon the vessel's departure to sea. This section does not prohibit the master of a vessel from employing the services of a docking master.

**§ 405.21. Accident reports.**

(a) *Written report*. A pilot involved in a marine accident while on duty shall submit a written report of the accident within 5 days of the accident to the Commission at the address or fascimile number listed at the issuance of each license or license renewal notice if the accident results in one of the following:

(1) Actual physical damage to property in excess of $1,500.

(2) Material damage affecting the seaworthiness or efficiency of a vessel.

(3) Stranding or grounding.

(4) Loss of life.

(5) Injury causing a person to remain hospitalized in excess of 72 hours.

(b) *Telephonic report*. In addition to submitting a written report under subsection (a), a pilot involved in a marine accident while on duty shall make a telephonic report of the accident to the Commission to telephone numbers listed at the issuance of each license or on the annual license renewal notice within 24 hours of the accident if the accident results in one of the following:

(1) Loss of life.

(2) Collision or grounding.

(3) Oil spill.

(c) *Contents of report*. An accident report, whether written or telephonic, shall set forth the following:

(1) Vessels and objects involved in the accident.

(2) Location, date and time of the accident.

(3) Weather and sea conditions when the accident occurred.

(4) Events and circumstances leading to the accident.

(5) Nature of the accident.

(6) Nature of loss or damage resulting from the accident.

(d) *Coast Guard Report*. A pilot may submit a copy of a completed Coast Guard Report of Vessel Casualty or Accident Form, along with any attachments to satisfy the requirements of subsections (a) and (c).

**§§ 405.27—405.29. (Reserved).**

**§ 405.31. (Reserved).**

**§ 405.33. (Reserved).**

[Pa.B. Doc. No. 02-1169. Filed for public inspection July 5, 2002, 9:00 a.m.]

# Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

## STATE BOARD OF MEDICINE

## [49 PA. CODE CH. 16]

## Biennial Renewal Fees

The State Board of Medicine (Board) amends § 16.13 (relating to licensure, certification, examination and registration fees) by increasing the biennial renewal fee for physicians to read as set forth in Annex A.

A. *Effective Date*

This final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*. The new fee will take effect for the biennial renewal period January 2003—December 2004.

B. *Statutory Authority*

This final-omitted rulemaking is authorized under section 6 of the Medical Practice Act (act) (63 P. S. § 422.6).

C. *Background and Purpose*

Section 6(a) of the act requires the Board to increase fees by regulation if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period. The Board raises virtually all its revenue through fees. The biennial license renewal fee is the most substantial revenue-generating fee of the fees charged by the Board. If the Board anticipates that its revenue will not meet its expenditures, the Board must increase its revenue. The Board last increased its biennial renewal fees on September 18, 1998.

The act mandates that the Board protect the public by adopting rules and regulations that govern the practice of medicine. In addition, the Board is mandated to promote public health, safety and welfare through Board initiatives and coordination with other agencies and departments in this Commonwealth.

The Medical Care Availability and Reduction of Error Act (Mcare Act) (40 P. S. §§ 1303.101—1303.910), amended the act in several significant ways that will increase the operational costs of the Board. The additional duties assigned to the Board include the obligation to commence investigations within 4 years of receipt of notice of a complaint with regard to a medical professional liability action that is filed against the physician; information regarding disciplinary action taken against the physician by a health care licensing authority of

another state; information regarding sentencing of the physician for an offense as provided in section 41 of the act (63 P. S. § 422.41); or information regarding an arrest of the physician for any of the following offenses in this Commonwealth or another state: 18 Pa.C.S. Chapter 25 (relating to criminal homicide); 18 Pa.C.S. § 2702 (relating to aggravated assault); 18 Pa.C.S. Chapter 31 (relating to sexual offenses); or a violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

Importantly, the Board will have authority to initiate disciplinary action against a physician for a single act of negligence. Currently the Board's authority is limited to multiple acts of negligence or a single act of gross negligence. Additionally the Board is charged with regulating physicians with regard to the completion of mandatory continuing medical education.

During 2000, the Bureau of Professional and Occupational Affairs (BPOA) received 1,046 complaints against physicians. During the consideration of the Mcare Act, the Insurance Federation of Pennsylvania estimated that approximately 7,000 medical malpractice civil complaints were filed in 2001. Enforcement of the notification and continuing medical education requirements is expected to generate an additional 1,000 cases. Accordingly, the Board anticipates a substantial increase in complaints filed against physicians under the Mcare Act provisions.

Consequently the Board will require additional resources to fulfill its additional obligations under the act. During the development of the Mcare Act, the General Assembly was aware additional Board resources would be necessary to implement the requirements under the act. These resources include staff, equipment, space, supplies, furniture and support resources such as contracts for expert witnesses. These additional resources will be needed in the Board's Administrative Office, the Bureau of Enforcement and Investigations, the Complaints Office, the Legal Office and the Office of Hearing Examiner. It is estimated that the additional operational resources and complement necessary to implement the Mcare Act will result in $5,379,031 in increased costs per year between the Board and the State Board of Osteopathic Medicine.

At its April 23, 2002, Board meeting, the Board reviewed a summary of its revenues and expenses. The summary, prepared by the BPOA Revenue Office and the Bureau of Finance and Operations and presented in the format as follows, shows that for the Board to support its pro rata portion of the increase, the Board must raise the biennial renewal fee to meet or exceed projected expenditures and thereby comply with section 6 of the act.

| *FINANCIAL STATUS* | *ACTUAL FY 00-01* | *PROJECTED FY 01-02* | *PROJECTED FY 02-03* | *PROJECTED FY 03-04* | *PROJECTED FY 04-05* | *PROJECTED FY 05-06* |
|---|---|---|---|---|---|---|
| Beginning Balance: | $1,222,431.15 | $4,151,604.96 | $1,625,719.95 | $990,175.95 | ($6,690,824.05) | ($9,072,973.05) |
| Revenue: | 6,110,851.25 | 525,000.00 | 6,110,851.00 | 525,000.00 | 6,110,851.25 | 525,000.00 |
| Prior Yr. Returned Funds: | 0.00 | 472,114.99 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Revenue: | 7,333,282.40 | 5,148,719.95 | 7,736,570.95 | 1,515,175.95 | (579,973.05) | (8,547,973.05) |
| Expenses: | 3,181,677.44 | 3,523,000.00 | 6,746,395.00 | 8,206,000.00 | 8,493,000.00 | 8,790,000.00 |
| Remaining Balance: | 4,151,604.96 | 1,625,719.95 | 990,175.95 | (6,690,824.05) | (9,072,973.05) | (17,337,973.05) |

As the foregoing indicates, a deficit of $6,690,824.05 is projected by the end of Fiscal Year 2003-2004. Without the fee increase the deficit grows to over $9 million by the end of Fiscal Year 2004-2005, and over $17.3 million by the end of Fiscal Year 2005-2006. This deficit is compounded and more critical since this Board fiscally stands on its own and is not contained within the Professional Licensure Augmentation Account (PLAA). Since this Board is not a part of the PLAA, it cannot utilize any fiscal backing to carry it through budget shortfalls. The Board anticipates that the new fee would enable it to meet its estimated expenditures.

The biennial renewal period for the Board begins January 2003. To meet the requirements of the act and the Mcare Act, fees must be raised for this period. Accordingly, the Board finds that under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), good cause exists to adopt the new fee and that publication as proposed rulemaking in this circumstance is impractical and contrary to the public interest as identified by the General Assembly in the Mcare Act.

D. *Description of Amendments*

The following table outlines the affected fee and change:

| | *Current Fee* | *New Fee* |
|---|---|---|
| Biennial renewal fee | $125 | $360 |

E. *Compliance with Executive Order 1996-1*

In compliance with Executive Order 1996-1, "Regulatory Review and Promulgation," the Board considered this final-omitted rulemaking as both required by law and the least restrictive means of covering the costs of services required to be performed by the Board.

F. *Fiscal Impact and Paperwork Requirements*

This final-omitted rulemaking increases the biennial renewal fee for physicians in this Commonwealth, but, otherwise, should have no fiscal impact on the private sector, the general public or political subdivisions.

This final-omitted rulemaking requires the Board to alter some of its forms to reflect the new biennial renewal fees; however, it should create no additional paperwork for the private sector.

G. *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

H. *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on May 22, 2002, the Board submitted

a copy of this amendment with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the final-omitted rulemaking was submitted to the Office of 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 June 11, 2002, the HPLC and SCP/PLC deemed approved the final-omitted rulemaking. Under sectin 5.1(e) of the Regulatory Review Act, IRRC met on June 13, 2002, and the final-omitted rulemaking was approved.

I. *Additional Information*

Interested persons are invited to submit inquiries regarding this rulemaking to Joanne Troutman, Board Administrator, State Board of Medicine, Post Office Box 2649, Harrisburg, PA 17105-2649, joatroutma@state.pa.us.

J. *Findings*

The Board finds that:

(1) Public notice of its intention to amend its regulation as adopted in this order under sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) has been omitted under section 204(3) of the CDL, because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, impractical and contrary to the public interest as identified by the General Assembly in the Mcare Act because the Board must increase revenues immediately to meet the obligations imposed on it by the Mcare Act.

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

K. *Order*

The Boad, acting under its authorizing satutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by amending § 16.13 to read as set forth in Annex A.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

CHARLES D. HUMMER, Jr., M.D.,
*Chairperson*

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 3183 (June 29, 2002).)

**Fiscal Note:** 16A-4913. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS**

**Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS**

**§ 16.13. Licensure, certification, examination and registration fees.**

(a) *Medical Doctor License*:

*License Without Restriction*:

| | |
|---|---|
| Application, graduate of accredited medical college | $35 |
| Application, graduate of unaccredited medical college | $85 |
| Biennial renewal | $360 |

*Extraterritorial License*:

| | |
|---|---|
| Application | $30 |
| Biennial renewal | $80 |

*Graduate License*:

| | |
|---|---|
| Application, graduate of accredited medical college | $30 |
| Application, graduate of unaccredited medical college | $85 |
| Annual renewal | $15 |

*Interim Limited License*:

| | |
|---|---|
| Application | $30 |
| Biennial renewal | $10 |

*Miscellaneous*:

| | |
|---|---|
| Application, institutional license | $35 |
| Application, temporary license | $45 |
| Biennial renewal, limited license (permanent) | $25 |

(b) *Midwife License*:

| | |
|---|---|
| Application | $30 |
| Biennial renewal | $40 |

(c) *Physician Assistant Certificate*:

| | |
|---|---|
| Application | $30 |
| Biennial renewal | $40 |
| Registration, physician assistant supervisor | $35 |
| Registration of additional supervisors | $ 5 |
| Satellite location approval | $25 |

(d) *Acupuncturist Registration*:

| | |
|---|---|
| Application | $30 |
| Biennial renewal | $40 |
| Registration, acupuncture supervisor | $30 |

(e) *Drugless Therapist License*:

| | |
|---|---|
| Biennial renewal | $35 |

(f) *Radiology Technician*:

| | |
|---|---|
| Application for examination | $25 |

(g) *Respiratory Care Practitioner Certificate*:

| | |
|---|---|
| Application, temporary permit | $30 |
| Application, initial certification | $30 |

| | |
|---|---|
| Biennial renewal | $25 |

(h) *Verification or Certification*:

| | |
|---|---|
| Verification of status | $15 |
| Certification of records | $25 |

(i) *Examination Fees*:

The State Board of Medicine has adopted Nationally recognized examinations in each licensing class. Fees are established by the National owners/providers of the examinations and are indicated in the examination applications.

[Pa.B. Doc. No. 02-1170. Filed for public inspection July 5, 2002, 9:00 a.m.]

## STATE BOARD OF OSETOPATHIC MEDICINE

## [49 PA. CODE CH. 25]

## Biennial Renewal Fees

The State Board of Osteopathic Medicine (Board) amends § 25.231 (relating to schedule of fees), by increasing the biennial renewal fee for physicians to read as set forth in Annex A.

A. *Effective Date*

This final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The new fee will take effect for the biennial renewal period November 2002—October 2004.

B. *Statutory Authority*

The statutory authority for this final-omitted rulemaking is section 13.1 of the Osteopathic Medical Practice Act (act) (63 P. S. § 271.13a).

C. *Background and Purpose*

Section 13.1(a) of the act requires the Board to increase fees by regulation if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period. The Board raises virtually all its revenue through fees. The biennial license renewal fee is the most substantial revenue-generating fee of the fees charged by the Board. If the Board anticipates that its revenue will not meet its expenditures, the Board must increase its revenue. The Board last increased its biennial renewal fees on November 1, 1996.

The act mandates that the Board protect the public by adopting rules and regulations that govern the practice of medicine. In addition, the Board is generally mandated to promote public health, safety and welfare, which are accomplished through Board initiatives and coordination with other agencies and departments in the Commonwealth.

The Medical Care Availability and Reduction of Error Act (Mcare Act) (40 P. S. §§ 1303.101—1303.910), amended the act in several significant ways that will increase the operational costs of the Board. The additional duties assigned to the Board include the obligation to commence investigations within 4 years of receipt of notice of: a complaint with regard to a medical professional liability action that is filed against the physician; information regarding disciplinary action taken against the physician by a health care licensing authority of another state; information regarding sentencing of the physician for an offense as provided in section 15 of the act (63 P. S. § 271.15); or information regarding an arrest of the physician for any of the following offenses in this Commonwealth or another state: 18 Pa.C.S. Chapter 25 (relating to criminal homicide); 18 Pa.C.S. § 2702 (relating to aggravated assault); 18 Pa.C.S. Chapter 31 (relating to sexual offenses); or a violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144). Importantly, the Board will have authority to initiate disciplinary action against a physician for a single act of negligence. Currently the Board's authority is limited to multiple acts of negligence or a single act of gross negligence.

During 2000, the Bureau of Professional and Occupational Affairs (BPOA) received 1,046 complaints against physicians. During the consideration of the Mcare Act, the Insurance Federation of Pennsylvania estimated that approximately 7,000 medical malpractice civil complaints were filed in 2001. Enforcement of the notification requirements is expected to generate additional cases. Accordingly, the Board anticipates a substantial increase in complaints filed against physicians under the Mcare Act provisions.

Consequently the Board will require additional resources to fulfill its additional obligations under the act. During the development of the Mcare Act, the General Assembly was aware additional Board resources were necessary to implement the requirements under the act. These resources include staff, equipment, space, supplies, furniture and support resources such as contracts for expert witnesses. These additional resources will be needed in the Board's Administrative Office, the Bureau of Enforcement and Investigations, the Complaints Office, the Legal Office and the Office of Hearing Examiner. The additional operational resources and complement necessary to implement the Mcare Act are estimated to result in $5,379,031 in increased costs per year between the State Board of Medicine and the Board.

At its May 8, 2002, Board meeting, the Board reviewed a summary of its revenues and expenses. The summary, prepared by the BPOA Revenue Office and the Bureau of Finance and Operations, shows that for the Board to support its pro rata portion of the increase, the Board must raise the biennial renewal fee to meet or exceed projected expenditures and thereby comply with section 13.1 of the act.

| *FINANCIAL STATUS* | *ACTUAL FY 00-01* | *PROJECTED FY 01-02* | *PROJECTED FY 02-03* | *PROJECTED FY 03-04* | *PROJECTED FY 04-05* | *PROJECTED FY 05-06* |
|---|---|---|---|---|---|---|
| Beginning Balance: | $366,411.48 | $752,043.78 | $320,515.94 | $98,910.94 | ($1,175,089.06) | ($1,660,089.06) |
| Revenue: | 946,451.00 | 112,000.00 | 950,000.00 | 112,000.00 | 950,000.00 | 112,000.00 |
| Prior Yr. Returned Funds: | 0.00 | 88,472.16 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total Revenue: | 1,312,862.48 | 952,515.94 | 1,270,515.94 | 210,910.94 | (225,089.06) | (1,548,089.06) |

| *FINANCIAL STATUS* | *ACTUAL FY 00-01* | *PROJECTED FY 01-02* | *PROJECTED FY 02-03* | *PROJECTED FY 03-04* | *PROJECTED FY 04-05* | *PROJECTED FY 05-06* |
|---|---|---|---|---|---|---|
| Expenses: | 560,818.70 | 632,000.00 | 1,171,605.00 | 1,386,000.00 | 1,469,000.00 | 1,485,000.00 |
| Remaining Balance: | 752,043.78 | 320,515.94 | 98,910.94 | (1,175,089.06) | (1,660,089.06) | (3,033,089.06) |

As the foregoing indicates, a significant deficit of $1.17 million is projected by the end of Fiscal Year 2003-2004. Without the fee increase the deficit grows to over $1.66 million by the end of Fiscal Year 2004-2005 and over $3.03 million by the end of Fiscal Year 2005-2006. This deficit is compounded and more critical since this Board fiscally stands on its own and is not contained within the Professional Licensure Augmentation Account (PLAA).

The biennial renewal period for the Board begins November 2002. To meet the requirements of the act and the Mcare Act, fees must be raised for this period. Accordingly, the Board finds that under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL) good cause exists to adopt the new fee and that publication as proposed rulemaking in this circumstance is impractical and contrary to the public interest as identified by the General Assembly in the Mcare Act.

D. *Description of Proposed Amendments*

The following table outlines the affected fee and change:

| *Application* | *Current Fee* | *New Fee* |
|---|---|---|
| Biennial renewal fee | $140 | $440 |

E. *Compliance with Executive Order 1996-1*

In compliance with Executive Order 1996-1, "Regulatory Review and Promulgation," the Board considered the regulation as both required by law and the least restrictive means of covering the costs of services required to be performed by the Board.

F. *Fiscal Impact and Paperwork Requirements*

The final-omitted rulemaking would increase the biennial renewal fee for physicians in this Commonwealth, but, otherwise, should have no fiscal impact on the private sector, the general public or political subdivisions.

The final-omitted rulemaking would require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the final-omitted rulemaking should create no additional paperwork for the private sector.

G. *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

H. *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on May 22, 2002, the Board submitted a copy of the final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the final-omitted rulemaking was submitted to the Office of 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 (71 P. S. § 745.5a(d)), the final-omitted rulemaking was deemed approved by the HPLC and the SCP/PLC on June 11, 2002, 2002. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 13, 2002, and approved the final-omitted regualtion.

I. *Additional Information*

Interested persons are invited to submit inquiries regarding this final-omitted rulemaking to Gina Bittner, Board Administrator, State Board of Osteopathic Medicine, Post Office Box 2649, Harrisburg, PA 17105-2649, gbittner@state.pa.us.

J. *Findings*

The Board finds that:

(1) Public notice of its intention to amend its regulations as adopted in this order under sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) has been omitted under the authority contained in section 204(3) of the CDL, because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, impractical and contrary to the public interest as identified by the General Assembly in the Mcare Act because the Board must increase revenues immediately to meet the obligations imposed on it by the Mcare Act.

(2) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

K. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by amending § 25.231 to read as set forth in Annex A.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

DANIEL D. DOWD, Jr. D.O.,
*Chairperson*

(*Editor's Note*: For the text of the order of the Independent Regulatory Commission, relating to this document, see 32 Pa.B. 3183 (June 29, 2002).)

**Fiscal Note**: 16A-5311. No fiscal impact; (8) recommends adoption.

## Annex A

## TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

## PART I. DEPARTMENT OF STATE

## Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

## CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

## Subchapter F. FEES

### § 25.231. Schedule of fees.

An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

Application for unrestricted license to practice as osteopathic physician—original, reciprocal, boundary or by endorsement . . . . . . . . . . . . . . . . . . . . . $45

Application for short-term camp license as osteopathic physician . . . . . . . . . . . . . . . . . . . . . . . . . . . . $30

Osteopathic Manipulative Therapy Examination . . . . $87

Temporary training license or graduate training certificate . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $30

Annual renewal of temporary training license or graduate training certificate . . . . . . . . . . . . . . . . . . . . . $25

Application for physician assistant certificate . . . . . . . $30

Application for supervising physician . . . . . . . . . . . . . . . $95

Uncertified verification of any license or permit . . . . . $15

Certification of any licenses, examination grades or hours . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $25

Biennial renewal—physicians . . . . . . . . . . . . . . . . . . . . . $440

Biennial renewal—physician assistants . . . . . . . . . . . . . $10

Penalty for late biennial renewal—per month or part of month . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $5

Duplicate license or certificate . . . . . . . . . . . . . . . . . . . . . . $5

Application for radiology (ARRT) examinations . . . . . . $25

ARRT Examination in Radiography . . . . . . . . . . . . . . . . $20

ARRT Examination in Nuclear Medicine Technology . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $20

ARRT Examination in Radiation Therapy Technology . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $20

ARRT Limited Examination in Radiography—Thorax and Extremities . . . . . . . . . . . . . . . . . . . . . . . . . $25

ARRT Limited Examination in Radiography—Skull and Sinuses . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $25

Application for acupuncturist registration . . . . . . . . . . . $30

Biennial renewal—acupuncturists . . . . . . . . . . . . . . . . . . $25

Application for acupuncturist supervisor registration . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $30

[Pa.B. Doc. No. 02-1171. Filed for public inspection July 5, 2002, 9:00 a.m.]