

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 9]

Transporters-for-Hire

The Liquor Control Board (Board) amends §§ 9.26 and 9.28 (relating to issuance and replacement of emblems; and use of vehicles) to read as set forth in Annex A.

The final-omitted rulemaking is necessary to aid entities licensed by the Board as transporters-for-hire. Transporters-for-hire are authorized to engage in the commercial transportation of liquor, malt or brewed beverages or alcohol to or from points located in this Commonwealth. The regulations currently require transporters-for-hire to own or lease their vehicles and employ the drivers of these vehicles. This final-omitted rulemaking permits these licensees to contract with unlicensed haulers for transportation services using the unlicensed transporters' vehicles and drivers. The final-omitted rulemaking enables transporters-for-hire to adjust to fluctuations in business volume without having to commit to large expenditures in vehicles and personnel. Moreover, persons who have contracted with and are performing transportation services for a transporter-for-hire would be considered agents of the licensee thus making the transporter-for-hire's license liable for a violation that may result. Additionally, the final-omitted rulemaking requires that transporters-for-hire notify the Board of vehicles that are no longer in service. The Board has not required this notification by its licensees as a matter of practice for numerous years; therefore, this requirement is being deleted.

Notice of proposed rulemaking is omitted under section 204(1) of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204(1)) since the amendments are related to agency practice and procedure and affected licensees have been notified of the amendments.

Fiscal Impact

The final-omitted rulemaking will impose no new costs upon transporters-for-hire, the Board or the public.

Paperwork Requirements

The final-omitted rulemaking will not result in additional paperwork for the State or the regulated community operating under transporter-for-hire licenses issued by the Board.

Statutory Authority

The authority for the final-omitted rulemaking is section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Contact Person

Persons requiring an explanation of the final-omitted rulemaking should contact Jerry Danyluk, Room 513, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on October 3, 2002, the Board submitted copies of the amendments with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Liquor Control and the Senate Committee on Law and Justice. 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).

In accordance with section 5.1(d) of the Regulatory Review Act, the final-omitted rulemaking was deemed approved on October 23, 2002, by the House Liquor Control Committee and the Senate Law and Justice Committee Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 24, 2002, and approved this final-omitted rulemaking.

Findings

The Board finds that:

(1) Notice of proposed rulemaking is omitted under the authority of section 204(1) of the CDL since the final-omitted rulemaking relates to Board policy, practice and procedure and the affected parties have been notified.

(2) Amendment of the Board's regulations is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Board, acting under the enabling statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 9, are amended by amending §§ 9.26 and 9.28 to read as set forth in Annex A.

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

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

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

JONATHAN H. NEWMAN,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Fiscal Note: 54-58. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

Subchapter A. TRANSPORTATION OF LIQUOR, MALT OR BREWED BEVERAGES OR ALCOHOL

VEHICLES

§ 9.26. Issuance and replacement of emblems.

(a) Vehicle identification emblems will be used only for vehicles which are either owned or leased by the licensee or, in the case of a transporter-for-hire, utilized under contract with an unlicensed transporter.

(b) Vehicle identification emblems shall be affixed to the lower right corner of the windshield of each vehicle, as viewed from the inside of the vehicle.

(c) If the vehicle identification emblem becomes marred, defaced, damaged or is removed, application for a new emblem shall be made immediately, accompanied by a fee of \$10 and filed with the Board.

§ 9.28. Use of vehicles.

(a) A licensee engaged in the purchase or sale of liquor, malt or brewed beverages, or alcohol may not use or permit to be used a vehicle bearing his vehicle identification emblem for the transportation of a liquor, malt or brewed beverages, or alcohol other than that used in the operation of his licensed business. Subject to the limitations of their respective licenses, transporter-for-hire licensees may transport liquor, malt or brewed beverages or alcohol in vehicles owned or leased by the transporter-for-hire licensees and operated by drivers employed by the transporter-for-hire licensees or operated by drivers employed by unlicensed transporters who are under contract with the transporter-for-hire licensees.

(b) Persons who have contracted with and are performing transportation services of alcoholic beverages for the transporter-for-hire licensees are considered agents of the transporters-for-hire for purposes of section 471 of the Liquor Code (47 P. S. § 4-471).

(c) A licensee may not sell, lease or permit the use by another of a vehicle for which a vehicle identification emblem has been issued without first defacing the lettering on the vehicle as described in § 9.22 (relating to identification of vehicles), and removing and destroying the vehicle identification emblem affixed thereto.

[Pa.B. Doc. No. 02-1998. Filed for public inspection November 8, 2002, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1223]

Outpatient Drug and Alcohol Clinic Services

The Department of Public Welfare (Department) by this order adopts amendments to Chapter 1223 (relating to outpatient drug and alcohol clinic services) to read as set forth in Annex A, under section 443.3(1) of the Public Welfare Code (code) (62 P. S. § 443.3(1)).

Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204(1)(iv)) and 1 Pa. Code § 7.4(1)(iv) (relating to omission of notice of proposed rulemaking) because the final-omitted rulemaking relates to Commonwealth benefits. Additionally, notice of proposed rulemaking is omitted for good cause as unnecessary in accordance with section 204(3) of the CDL and 1 Pa. Code § 7.4(3) as this final-omitted rulemaking benefits Medical Assistance (MA) recipients as well as providers by allowing for drug and alcohol treatment services to be more efficiently and expeditiously provided. The final-omitted rulemaking provides for the elimination of the current requirement for an outpatient drug and alcohol clinic's supervisory physician to perform a comprehensive medical examination within 15 days following intake and before the provision of treatment. In many instances, this requirement unnecessarily delayed treatment to individuals requiring drug and alcohol services.

Providers, consumers, advocacy groups and Department of Health (DOH) officials have worked closely with the Department in establishing this regulatory change based on current DOH requirements relating to staff qualifications for drug and alcohol clinics in 28 Pa. Code §§ 704.6—704.8 (relating to qualifications for the position of clinical supervisor; qualifications for the position of counselor; and qualifications for the position of counselor assistant). These staff requirements ensure that individuals who seek drug and alcohol services are initially assessed and determined to require treatment by professionally trained staff, without the need for a comprehensive medical examination by a physician.

Purpose

The purpose of this final-omitted rulemaking is to:

1. Eliminate the need for the outpatient drug and alcohol clinic's supervisory physician to perform a comprehensive medical examination within 15 days following intake and before the provision of treatment.

2. Require a level of care assessment for each patient prior to admission to the clinic and the provision of treatment by a Drug and Alcohol Addictions Professional (DAAP). A DAAP must be trained in the use of the Pennsylvania Client Placement Criteria (PCPC) for adults, American Society of Addiction Medicine (ASAM) Patient Placement Criteria (PPC) for adolescents or an alternative level of care criteria approved by the DOH or other criteria jointly approved by both the DOH and the Department.

3. Require, within 15 days following intake, the clinic's supervisory physician to review and verify each patient's level of care assessment, psychosocial evaluation and initial treatment plan prior to the provision of any treatment beyond the 15th day following intake. If this condition is not met, payment will not be made for outpatient drug and alcohol clinic services.

4. Require a physician to perform a comprehensive medical examination or psychiatric evaluation, when medically necessary, as indicated by the level of care assessment or the clinic's supervisory physician's review.

Background

Current § 1223.52(a)(6) (relating to payment conditions for various services) requires a drug and alcohol clinic's supervisory physician to examine and evaluate a potential patient, determine the patient's diagnosis and develop an initial treatment plan within 15 days following intake and before the provision of treatment. This final-omitted rulemaking was developed at a time when drug and alcohol clinics did not have clinical or ongoing training requirements for staff. Since that time, standards have been promulgated by the DOH in 28 Pa. Code Chapter 704 (relating to staffing requirements for drug and alcohol treatment activities). Based on the DOH requirements, the Department and DOH maintain contractual arrangements with managed care organizations and single county authorities that ensure qualified staff perform a patient's level of care assessment prior to admission to an outpatient drug and alcohol clinic and the provision of treatment.

In addition to the DOH regulatory standards relating to staffing in drug and alcohol clinics, drug and alcohol treatment programs serving DOH and MA eligible patients have been required to use the approved standards of clinical necessity or guidelines; PCPC for adults and ASAM PPC for adolescents. The DOH approved standards of clinical necessity or guidelines were developed to

address the medical need for the placement of the patient in the level, type and duration of treatment necessary and to address the degree of direct medical management. Patient level of care assessment and the application of the DOH approved placement criteria is conducted by a DAAP trained in the use of the PCPC or ASAM PPC.

As a result of the DOH regulatory standards relating to drug and alcohol clinic staffing qualifications, the Department was requested to reexamine the regulations requiring the clinic's supervisory physician to perform the comprehensive medical examination. Based on input from consumers, providers and advocacy groups, the Department determined that § 1223.52(a)(6) created unnecessary barriers to expedient drug and alcohol clinic services. The Department also considered and adopted the Pennsylvania Psychiatric Society's recommendation to provide payment for a comprehensive medical examination or psychiatric evaluation by a physician, when either the level of care assessment or the physician's review indicates the need.

This final-omitted rulemaking does not apply to methadone maintenance clinics because of Federal law requirements in 42 CFR 8.12(f)(2) (relating to Federal opioid treatment standards). Federal regulations require a comprehensive medical examination be performed for each MA recipient before dispensing methadone to the MA recipient.

Need for Final-Omitted Rulemaking

This final-omitted rulemaking is necessary to eliminate the need for the outpatient drug and alcohol clinic's supervisory physician to perform a comprehensive medical examination within 15 days following intake and before the provision of treatment. This final-omitted rulemaking also provides for consistency with the DOH regulations by allowing a DAAP trained in the use of PCPC for adults or ASAM PPC for adolescents or an alternative level of care criteria approved by the DOH or other criteria jointly approved by both the DOH and the Department to perform a level of care assessment for each patient prior to admission to the clinic and the provision of treatment.

Affected Individuals

MA outpatient recipients seeking drug and alcohol services will be affected by the final-omitted rulemaking with the exception of methadone maintenance clients.

Providers of outpatient drug and alcohol services with the exception of methadone maintenance clinics are subject to the final-omitted rulemaking. Affected clinics have sought and are already aware of this final-omitted rulemaking.

Summary of Amendment

Sections 1223.2, 1223.14 and 1223.41 (relating to definitions; noncovered services; and participation requirements) and § 1223.52 are amended or added to reflect current staff qualification standards by the DOH in 28 Pa. Code §§ 704.6—704.8 and in accordance with State Civil Service Commission standards. The final-omitted rulemaking allows for individual level of care assessments and the application of the DOH approved placement criteria to be conducted by a DAAP trained in the use of the PCPC for adults and ASAM PPC for adolescents. An assessment eliminates the need for the outpatient drug and alcohol clinic's supervisory physician to perform a comprehensive medical examination within 15 days following intake and before the provision of treatment. This

allows MA recipients the benefit of access to medically necessary drug and alcohol treatment services in a more expeditious manner.

Fiscal Impact

Public Sector

The Department's Office of Medical Assistance Programs (OMAP) does not anticipate any fiscal impact on the public sector other than minor cash flow costs over 1 year that is estimated to be approximately \$222,000.

Private Sector and General Public

The OMAP does not anticipate any fiscal impact on the private sector or the general public.

Paperwork Requirements

There are no additional reports or new forms needed to comply with the final-omitted rulemaking.

Sunset Date

The OMAP will evaluate the effectiveness of this final-omitted rulemaking on an ongoing basis. Necessary and appropriate changes will be made in response to letters, recommendations and comments from other offices, agencies and individuals and as a result of Departmental findings. No sunset date is required.

Public Comment

Although the final-omitted rulemaking is being adopted without prior notice, interested persons are invited to submit written comments, within 30 days of the date of this publication to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users).

Regulatory Review Act

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on September 12, 2002, the Department submitted copies of this final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. On the same date, the final-omitted 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(a) of the Regulatory Review Act, on October 2, 2002, this final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, on October 24, 2002, IRRC met and approved this final-omitted rulemaking.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted because this rulemaking relates to Commonwealth benefits in accordance with section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1)(iv).

(2) Notice of proposed rulemaking is unnecessary under section 204(3) of the CDL and 1 Pa. Code § 7.4(3).

(3) The adoption of this final-omitted rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department, acting under the code, orders:

(a) The regulations of the Department, 55 Pa. Code Chapter 1223, are amended by amending §§ 1223.2, 1223.14, 1223.41 and 1223.52 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

FEATHER O. HOUSTOUN,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Fiscal Note: 14-476. (1) General Fund;

	MA— Outpatient	MA— Capitation
(2) Implementing Year 2001-02 is	-0-	-0-
(3) 1st Succeeding Year 2002-03 is	\$83,000	\$139,000
2nd Succeeding Year 2003-04 is	-0-	-0-
3rd Succeeding Year 2004-05 is	-0-	-0-
4th Succeeding Year 2005-06 is	-0-	-0-
5th Succeeding Year 2006-07 is	-0-	-0-
	MA— Outpatient	MA— Capitation
(4) 2000-01 Program—	\$668,586,000	\$1,487,944,000
1999-00 Program—	\$622,669,000	\$1,384,763,000
1998-99 Program—	\$695,935,000	\$1,026,075,000
(7) Medical Assistance Outpatient and Capitation; (8) recommends adoption. Funding is included in the 2002-03 budget for this regulatory change.		

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1223. OUTPATIENT DRUG AND ALCOHOL CLINIC SERVICES

GENERAL PROVISIONS

§ 1223.2. Definitions.

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

* * * * *

DAAP—Drug and alcohol addictions professional—One of the following:

(i) An individual who is certified as an addictions counselor by a Statewide certification body and who is a member of a National certification body.

(ii) An individual who is certified by another state government's substance abuse counseling certification board.

(iii) An individual possessing a minimum of a bachelor's degree in social science and 2 years experience in treatment/case management services for persons with substance abuse/addiction disorders.

(iv) An individual meeting the qualifications of one of the following:

- (A) Drug and Alcohol Case Management Specialist.
- (B) Drug and Alcohol Case Management Specialist Trainee.
- (C) Drug and Alcohol Case Management Supervisor.
- (D) Drug and Alcohol Counselor.
- (E) Drug and Alcohol Counselor Assistant.

DAC—Drug and alcohol counselor—An individual who provides a wide variety of treatment services which may include performing diagnostic assessments for chemical dependency, developing treatment plans, and providing individual and group counseling. This individual shall meet the education and experience requirements in 28 Pa. Code § 704.7 (relating to qualifications for the position of counselor).

DACA—Drug and alcohol counselor assistant—An individual in an entry level position who provides treatment services under the direct supervision of a trained counselor or clinical supervisor. This individual shall meet the education, experience, supervision and training requirements in 28 Pa. Code §§ 704.8 and 704.11 (relating to qualifications for the position of counselor assistant; and staff development program).

DACMSP—Drug and alcohol case management specialist—An individual who meets the minimum experience and training requirements established by the State Civil Service Commission for DACMSP.

DACMST—Drug and alcohol case management specialist trainee—An individual who meets the minimum experience and training requirements established by the Civil Service Commission for DACMST.

DACMSU—Drug and alcohol case management supervisor—An individual who meets the minimum experience and training requirements established by the Civil Service Commission for DACMSU.

* * * * *

Level of care assessment—A face-to-face interview with an individual using the most current edition of the Pennsylvania Client Placement Criteria for adults and the most current edition of the American Society of Addiction Medicine Patient Placement Criteria for adolescents to ascertain the severity of alcohol or other drug use and degree of impairment by identifying the biomedical, emotional/behavioral and environmental effects of that use in order to determine proper placement and treatment for the individual.

* * * * *

Psychosocial evaluation—A composite picture of the individual in relationship to the collected historical information in order to identify possible relationships, conditions and causes leading to the individual's current situation.

* * * * *

COVERED AND NONCOVERED SERVICES**§ 1223.14. Noncovered services.**

Payment will not be made for the following types of services regardless of where or to whom they are provided:

* * * * *

(14) Methadone maintenance clinic services provided before the date of the physician's comprehensive medical examination, diagnosis and treatment plan.

(15) Services provided without a level of care assessment for each patient prior to admission to the clinic.

(16) Services provided within or beyond the 15th calendar day following intake, without the clinic's supervisory physician's review and approval of the patient's level of care assessment, psychosocial evaluation, treatment plan and determination of the patient's diagnosis as specified in § 1223.52(a)(6)(i).

PROVIDER PARTICIPATION**§ 1223.41. Participation requirements.**

In addition to the participation requirements established in Chapter 1101 (relating to general provisions), drug/alcohol outpatient clinics shall meet the following participation requirements:

* * * * *

(11) Ensure that a DAAP performs a level of care assessment for each patient prior to admission to the clinic and the provision of treatment.

PAYMENT FOR OUTPATIENT DRUG/ALCOHOL CLINIC SERVICES**§ 1223.52. Payment conditions for various services.**

(a) *Elibility for payment.* The following conditions shall be met by an outpatient drug and alcohol clinic, as applicable, to be eligible for payment:

* * * * *

(6) With the exception of methadone maintenance clinic services, a DAAP shall perform a level of care assessment for each patient prior to admission to the clinic and the provision of services.

(i) Within 15 days following intake, the clinic's supervisory physician shall review and verify each patient's level of care assessment, psychosocial evaluation and initial treatment plan prior to the provision of any treatment beyond the 15th day following intake. The clinic's supervisory physician shall verify the patient's diagnosis. The clinic's supervisory physician shall sign and date the patient's level of care assessment, psychosocial evaluation, treatment plan and diagnosis in the patient's record. Payment will not be made for services provided within or beyond the 15th day following intake, without the clinic's supervisory physician's review and approval of the level of care assessment, psychosocial evaluation, treatment plan and determination of the patient's diagnosis.

(ii) Sixty days following the date of the initial treatment plan and at the end of every 60-day period during the duration of treatment, the clinic's supervisory physician shall review and update each patient's treatment plan. Each review and update shall be dated, documented and signed in the patient's record by the clinic's supervisory physician.

(iii) The treatment plan and updates shall be based upon the psychosocial evaluation and diagnoses. Treatment shall be provided in accordance with the treatment

plan and updates and under the supervision and direction of the clinic's supervisory physician. Clinic supervisory physician reviews and reevaluations of diagnoses, treatment plans and updates shall be done in the clinic.

(iv) A physician may perform a comprehensive medical examination or psychiatric evaluation, when medically necessary, as indicated by either the level of care assessment or the clinic's supervisory physician's review.

(7) For methadone maintenance clinics, following intake and prior to the provision of any services, the clinic's supervisory physician shall perform a comprehensive medical examination on each patient to determine the patient's diagnoses, initial treatment plan and identify any medical conditions. The clinic's supervisory physician shall document and sign the comprehensive medical examination and treatment plan in the patient's record. The treatment plan shall be developed, maintained and periodically reviewed in accordance with the following criteria:

(i) Sixty days following the date of the initial treatment plan and at the end of every 60-day period during the duration of treatment, the clinic's supervisory physician shall review and update each patient's treatment plan. Each review and update shall be dated, documented and signed in the patient's record by the clinic's supervisory physician.

(ii) The treatment plan and updates shall be based upon the comprehensive medical examination, psychosocial evaluation and diagnoses. Treatment shall be provided in accordance with the treatment plan and updates and under the supervision and direction of the clinic's supervisory physician. Clinic supervisory physician reviews and reevaluations of diagnoses, treatment plans and updates shall be done in the clinic.

[Pa.B. Doc. No. 02-1999. Filed for public inspection November 8, 2002, 9:00 a.m.]

Title 61—REVENUE**DEPARTMENT OF REVENUE****[61 PA. CODE CHS. 816, 870 AND 871]****Cash 5, Super 6 Lotto and Powerball**

The Secretary of Revenue, under the authority contained in section 303 of the State Lottery Law (72 P. S. § 3761-303), amends Chapters 816, 870 and 871.21 (relating to Cash 5; Super 6 Lotto; and Powerball) to read as set forth in Annex A.

Because of time constraints associated with the establishment, operation and administration of lottery games, the Department of Revenue (Department), under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204) and the regulation thereunder, 1 Pa. Code § 7.4 (relating to omissions of notice of proposed rulemaking), finds that notice of proposed rulemaking is, under the circumstances, impracticable and, therefore, may be omitted.

The Department's justification for utilizing the rulemaking omitted process is based upon the time constraints associated with the establishment, operation and administration of lottery games. The efficient and successful operation of the Lottery requires that the Lottery implement the latest innovations and trends in the lottery industry. The inability to adapt marketing strate-

gies quickly may lead to a reduction in lottery revenues. The necessity of the Lottery to react quickly to market forces has been recognized in the past as an appropriate justification for utilizing the proposed rulemaking omitted process as evidenced by the approval of these types of regulations in the past.

Purpose of Amendments

This final-omitted rulemaking amends the Cash 5 and Super 6 Lotto regulations by deleting language that allowed for the cancellation of a ticket to make the rules relating to ticket cancellation consistent with the rule set forth in the Powerball game. The uniform treatment of ticket sales will provide consistency among the on-line games available to Commonwealth players. In addition, the Super 6 Lotto regulations are amended by establishing a new minimum jackpot of \$500,000. The change in the minimum jackpot amount is done to accommodate the addition of the Powerball game to the lineup of jackpot games available to Commonwealth players.

The amendment to the Powerball section is necessary to allow the Department adequate time to publish a notice of future changes to the Powerball game.

Explanation of Regulatory Requirements

Section 816.106(d) and (e) (relating to Cash 5 bet slip and ticket characteristics and restrictions) is amended by deleting language that allowed for the cancellation of a ticket. Language is added to § 816.106(d) which specifically states that a Cash 5 ticket may not be canceled or voided once printed. Explanatory language that the placing of bets is done at the player's own risk is added to subsection (e). Language relating to the cancellation of a ticket is also deleted from § 816.110(a)(6), (9) and (11) (relating to ticket validation requirements).

Minor editorial changes were made to the definition of "ticket" in §§ 870.3, 870.5 and 870.6(c) (relating to definitions; ticket price; and Super 6 Lotto bet slip and ticket characteristics and restrictions). Section 870.6(d) and (e) is amended by deleting language that allowed for the cancellation of a ticket and by adding language which specifically states that a Super 6 Lotto ticket may not be canceled or voided once printed and explains that the placing of bets is done at the player's own risk.

Section 870.8(g) (relating to determination of prize winners) is amended by revising paragraph (4) to provide that the new minimum jackpot will be at least \$500,000. Other revisions were made to paragraphs (2), (4) and (5) to clarify the cash and annuity payment options. The provisions set forth in subsection (l) relating to the reallocation of moneys from the Wild Card Lotto and Keystone Jackpot games are no longer necessary and are deleted from the regulation.

Section 870.10(a)(6) and (9) (relating to ticket validation requirements) is amended by deleting language that allowed for the cancellation of a ticket.

Section 871.21(a) (relating to future changes to Powerball) is amended by changing the public announcement period to 30 days before the change takes effect. As the Department worked through its first change to the Powerball rules with the Multi-State Lottery Association (MUSL), it became apparent that the 90-day period set forth in the original rulemaking was not feasible due to the fact that the MUSL and its member lotteries must respond to changes in market dynamics quickly. In addition, the MUSL is removed from the public announcement process because as a member of the MUSL Powerball Product Group, the Commonwealth's notice of a change is notice by the MUSL.

Fiscal Impact

The Department has determined that this final-omitted rulemaking will have no significant adverse fiscal impact on the Commonwealth and that the games described by the regulations will produce an undetermined net revenue. The change in the minimum jackpot for Super 6 Lotto is expected to affect sales of tickets for that particular game. However, this reduction is estimated to be offset by sales of Powerball game tickets.

Paperwork

This final-omitted rulemaking will not generate substantial paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

This final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of this final-omitted rulemaking is Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on September 9, 2002, the Department submitted a copy of the regulations with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. 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).

In accordance with section 5.1(d) of the Regulatory Review Act, the final-omitted rulemaking was deemed approved by the Committees on September 30, 2002. IRRC met on October 24, 2002, and approved the final-omitted rulemaking under section 5.1(e) of the Regulatory Review Act.

Findings

The Department finds that the final-omitted rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are impracticable because of the time constraints associated with the establishment, operation and administration of lottery games.

Order

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

(a) The regulations of the Department, 61 Pa. Code Chapters 816, 870 and 871, are amended by amending §§ 816.106, 816.110, 870.3, 870.5, 870.6, 870.8, 870.10 and 871.21 to read as set forth in Annex A.

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

(c) The Secretary 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*.

LARRY P. WILLIAMS,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Fiscal Note: 15-421. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART V. STATE LOTTERIES

CHAPTER 816. CASH 5

§ 816.106. Cash 5 bet slip and ticket characteristics and restrictions.

(a) The player shall select five numbered squares in a game grid on a bet slip or request number selection by quick pick. Bet slips shall be available at no cost to the purchaser. The minimum entry is \$1. For \$1, play game grid A, for \$2, play game grids A and B, for \$3, play game grids A, B and C, for \$4, play game grids A, B, C and D, for \$5, play game grids A, B, C, D and E. Game grids shall be selected in alphabetical order in accordance with the instructions printed on the bet slip. A bet slip has no pecuniary or prize value and does not constitute evidence of the purchase of a ticket or of numbers selected.

(b) To purchase a Cash 5 ticket, a player shall, in addition to the purchase price, submit the completed bet slip, or request number selection by quick pick, to an on-line retailer to have issued a standard game ticket. The ticket shall contain the five number selections played in each game grid identified by a letter as described in subsection (a), the drawing date, the amount bet and the validation number data. This standard game ticket shall be the only valid proof of the bet placed, and the only valid receipt for claiming a prize. The standard game ticket shall only be valid for the drawing date printed on the ticket.

(c) If bet slips are unavailable, plays may also be given to an authorized retailer in groups of five number selections for each game grid for each \$1 wagered. The selections shall be manually entered into the computer terminal by the retailer.

(d) A Cash 5 ticket may not be canceled or voided once printed by the Lottery terminal, even if the ticket is printed in error.

(e) It is the sole responsibility of the ticket purchaser or holder to verify the accuracy and condition of data printed on the standard game ticket. The placing of bets is done at the player's own risk through the on-line retailer who is acting on behalf of the player in entering the play or plays.

§ 816.110. Ticket validation requirements.

(a) *Valid tickets.* To be a valid Cash 5 ticket and entitled to a prize, the following conditions shall be met:

(1) The ticket validation number shall be present in its entirety and shall correspond, using the computer validation file, to the selected numbers printed on the ticket for the date printed on the ticket.

(2) The ticket shall be intact.

(3) The ticket may not be mutilated, altered, reconstituted or tampered with.

(4) The ticket may not be counterfeit or an exact duplicate of another winning ticket.

(5) The ticket shall have been issued by the Lottery through an on-line retailer in an authorized manner.

(6) The ticket may not have been stolen.

(7) The ticket shall be validated in accordance with § 816.111 (relating to procedures for claiming and payment of prizes).

(8) The player selected or quick pick numbers on the ticket shall be in individual groups of five numbers each associated with a single letter, A, B, C, D or E, and the five numbers and the associated letter shall constitute a single play.

(9) The ticket data shall have been recorded on the central computer system prior to the drawing and the ticket data shall match the computer record in every respect.

(10) The ticket shall be signed and presented to the Lottery or its authorized representative as set forth in § 816.111 and validated at Lottery headquarters.

(11) The player selected or quick pick numbers, the validation number data and the drawing date of the winning ticket shall appear on the official file of winning plays; and a ticket with that exact data may not have been previously paid.

(12) The ticket may not be misregistered, defectively printed or printed or produced in error to an extent that it cannot, in the sole opinion of the Lottery, be processed by the Lottery.

(13) The ticket shall pass other confidential security checks of the Lottery.

(14) By submitting a Cash 5 ticket for validation, the player agrees to abide by this chapter as determined by the Director.

(15) There may not be another breach of this chapter in relation to the ticket which, in the opinion of the Director, justifies disqualification.

(b) *Invalid or defective tickets; disputes.* A ticket not passing the validation checks in subsection (a) will be considered invalid and will not be paid.

(1) In cases of doubt, the determination of the Secretary is final and binding. The Secretary may replace an invalid ticket with a ticket of equivalent sale price from a current Lottery game.

(2) If a defective ticket is purchased or if the Secretary determines to adjust an error, the sole and exclusive remedy will be the replacement of the defective or erroneous ticket with a ticket of equivalent sale price from a current Lottery game.

(3) If a ticket is not paid by the Lottery and a dispute occurs as to whether the ticket is a valid winning ticket, the Lottery may replace the ticket as provided in paragraph (2). This is the sole and exclusive remedy of the holder of the ticket.

CHAPTER 870. SUPER 6 LOTTO

§ 870.3. Definitions.

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

Apparent winning ticket—A ticket bearing winning numbers which has not been validated by the Lottery.

Cash option—A method of payment that the player selects at the time of purchase of a Super 6 Lotto ticket to receive a pari-mutuel share of the prize money allocated to the first prize category as a cash payment, if the player is a holder of a winning ticket for that category.

Drawing—The process of selecting winning numbers that determine the number of winners for each prize category of the game.

Game section—The area of the Super 6 Lotto bet slip that contains five sections of 69 squares each numbered 1 through 69. Each section is lettered either A, D, G, J or M, and when used to purchase a ticket, corresponds to the numbers selected and the numbers that are quick picked and printed on the ticket.

On-line retailer or retailer—A person who is properly authorized by the Lottery to sell tickets.

Quick pick—The random selection through a Lottery terminal of six different numbers from 1 through 69 that appear on a ticket and are played by a player in the Super 6 Lotto Game.

Super 6 Lotto bet slip—A card having a game section used by a player to play the game.

Ticket—A Super 6 Lotto ticket, produced by a licensed retailer in an authorized manner, containing a letter prefix followed by six selected numbers from 1 through 69 and followed by two additional sets of six numbers from 1 through 69 each preceded by a letter prefix quick picked as bonus selections, a drawing date, the amount bet, cash option selection, if applicable, and validation number data. Each set of six numbers constitutes a play, of which there may be three or more, in multiples of three up to fifteen on a ticket.

Winning numbers—Six numbers, from 1 through 69, selected at a Super 6 Lotto drawing and which have been subsequently validated by the Lottery, which shall be used to determine the winning Super 6 Lotto plays on tickets.

Winnings pool—The amount allocated from Super 6 Lotto gross sales for a particular Super 6 Lotto Game drawing for the purpose of paying prizes in a particular Super 6 Lotto drawing. Money brought forward is allocated to the first prize category as provided in § 870.8(f) (relating to determination of prize winners).

§ 870.5. Ticket price.

Tickets may be purchased for \$1 per ticket, which ticket shall consist of three individual game plays, one of which, at the owner's option can be the numbers selected by the player; the remaining two number plays are quick pick selections. Additional tickets may, at the discretion of the player, be purchased in increments of three individual game plays per \$1 wagered.

§ 870.6. Super 6 Lotto bet slip and ticket characteristics and restrictions.

(a) The player shall select, or request selection by computer, six numbered squares, in one or more of the game sections on a Super 6 Lotto bet slip. Super 6 Lotto bet slips shall be available at no cost to the player. The minimum entry is \$1. For \$1, play game A; for \$2, play games A and D; for \$3, play games A, D and G; for \$4, play games A, D, G and J; for \$5, play games A, D, G, J and M. Game sections shall be selected in alphabetical order in accordance with the instructions printed on the Super 6 Lotto bet slip. A Super 6 Lotto bet slip has no pecuniary or prize value and does not constitute evidence of the purchase of a ticket or the numbers selected.

(b) To purchase a ticket, players shall, in addition to the purchase price, submit the completed Super 6 Lotto bet slip, or request number selection, either by quick pick or manual terminal entry, to an on-line retailer to have issued a ticket. The ticket shall contain three six number selections, two of which will be quick pick selections, in each game section, (for each \$1 wagered) identified by a letter, the drawing date, amount bet, cash option selection if applicable, and validation number data. This ticket shall be the only valid proof of the bet placed, and the only valid receipt for claiming a prize. The ticket shall only be valid for the drawing date printed on the ticket.

(c) If Super 6 Lotto bet slips are unavailable, number selections may be given to an on-line retailer in groups of six number selections, one for each game section, for each \$1 wagered. The selections shall be manually entered into the computer terminal by the retailer.

(d) A Super 6 Lotto ticket may not be canceled or voided once printed by the Lottery terminal, even if the ticket is printed in error.

(e) It is the sole responsibility of the ticket holder to verify the accuracy and condition of data printed on the ticket. The placing of bets is done at the player's own risk through the on-line retailer who is acting on behalf of the player in entering the play or plays.

§ 870.8. Determination of prize winners.

(a) The pari-mutuel prize to be awarded to an owner of an apparent winning ticket will be determined as follows:

<i>Tickets Containing the Following, In One Single Lettered Game Play</i>	<i>Prize Category</i>	<i>Percent (%) of Winners Pool Allocated to Prize Category</i>
All Six Winning Numbers	1st	76.0%
Five Winning Numbers	2nd	8.0%
Four Winning Numbers	3rd	7.5%
Three Winning Numbers	4th	8.5%

(b) Prize money allocated to the first prize category will be paid on a pari-mutuel basis, divided equally by the number of plays on tickets determined by the Lottery to be entitled to claim a first prize.

(c) Prize money allocated to the second prize category will be paid on a pari-mutuel basis, divided equally by the number of plays on tickets determined by the Lottery to be entitled to claim a second prize.

(d) Prize money allocated to the third prize category will be paid on a pari-mutuel basis, divided equally by the number of plays on tickets determined by the Lottery to be entitled to claim a third prize.

(e) Prize money allocated to the fourth prize category will be paid on a pari-mutuel basis, divided equally by the number of plays on tickets determined by the Lottery to be entitled to claim a fourth prize.

(f) If, in a Super 6 Lotto drawing, there are no plays on tickets which qualify for a particular prize category, the pari-mutuel prize money allocated to the particular prize category will be reallocated and added to the amount allocated for the first prize category money in the next Super 6 Lotto drawing.

(g) Super 6 Lotto prizes will be paid as follows:

(1) Individual ticket prize payments will be paid entirely in cash with the exception of the first prize category.

(2) Prizes payable to the first prize category winners will be paid either by an initial cash payment plus equal annual payments over a specified term of 25 years or a one-time cash payment if the owner selected the cash option at the time of purchase.

(3) If more than one winning first prize play is determined, each, upon meeting the requirements of §§ 870.10 and 870.11 (relating to ticket validation requirements; and procedures for claiming and payment of prizes), is entitled to a prorated payment share of the total first prize category.

(4) For first prize category payments, the total one-time cash payment for the first prize category will be in an amount which is the greater of either the cash available in the winnings pool for the first prize category or the announced cash option amount; or, if the annuity option is selected at the time of purchase, the total of the initial and annual payments over the term for the first prize will be the greater of either the announced annuity jackpot or the annuity that could be purchased with the cash available in the winnings pool for the first prize category. The minimum jackpot will be at least \$500,000. The annuity will be paid in an initial cash payment plus equal annual payments over a specified term of 25 years. If more than one winning play is determined, each is entitled to a prorated share of the total first prize category as provided in paragraph (3).

(5) For first prize category payments, the Secretary may elect to make payment entirely as a one-time cash payment, if public notice is given in accordance with subsection (j). This one-time cash payment shall be the amount equal to the greater of either the cash available in the winnings pool for the first prize category or the announced cash option jackpot.

(h) A winning Super 6 Lotto play is entitled only to the highest prize won by those numbers.

(i) For purpose of calculating a Super 6 Lotto prize, the amount to be paid will be rounded down to the nearest 50¢.

(j) The number of prize categories, the allocation of prize money among the prize categories and the annuity term may be changed at the discretion of the Secretary and the change will be announced by public notice. The changes will only apply prospectively to Super 6 Lotto drawings as of the date specified in the public notice.

(k) Retailer incentive and marketing promotion programs, including the use of unfunded free tickets, may be implemented at the discretion of the Secretary. Funds for the programs, if needed, will be drawn from the Lottery fund.

§ 870.10. Ticket validation requirements.

(a) *Valid tickets.* To be a valid ticket, the following conditions shall be met:

(1) The ticket validation number shall be present in its entirety and shall correspond, using the computer validation file, to the selected numbers printed on the ticket for the date printed on the ticket.

(2) The ticket shall be intact.

(3) The ticket may not be mutilated, altered, reconstituted or tampered with.

(4) The ticket may not be counterfeit or an exact duplicate of a winning ticket.

(5) The ticket shall have been issued by the Lottery through a licensed retailer.

(6) The ticket may not have been stolen.

(7) The ticket shall be validated in accordance with § 870.11 (relating to procedures for claiming and payment of prizes).

(8) The player-selected or computer-selected numbers on the ticket shall be in individual groups of six numbers each associated with a single letter, A, B, C, D, E, F, G, H, I, J, K, L, M, N or O and the six numbers, and the associated letter shall constitute a single game play.

(9) The ticket data shall have been recorded on the Lottery's central computer system prior to the drawing and the ticket data shall match this computer record in every respect.

(10) The player selected or computer selected numbers, cash option selection, if applicable, the validation number data and the drawing date of an apparent winning ticket shall appear on the official file of winning tickets; and a ticket with that exact data may not have been previously paid.

(11) The ticket may not be misregistered, defectively printed, or printed or produced in error to an extent that it cannot be processed by the Lottery.

(12) The ticket shall pass other confidential security checks of the Lottery.

(13) By submitting a ticket for validation, the player agrees to abide by this chapter as determined by the Secretary.

(14) There may not be another breach of this part in relation to the ticket which, in the opinion of the Secretary, justifies disqualification.

(b) *Invalid or defective tickets/disputes.* A ticket not passing the validation checks in subsection (a) will be considered invalid and will not be paid.

(1) In cases of doubt, the determination of the Secretary is final and binding. The Secretary may replace an invalid ticket with a ticket of equivalent sale price from a current Lottery game.

(2) If a defective ticket is purchased or if the Secretary determines to adjust an error, the sole and exclusive remedy will be the replacement of the defective or erroneous ticket with a ticket of equivalent sale price from a current Lottery game.

(3) If a ticket is not paid by the Lottery and a dispute occurs as to whether the ticket is a winning ticket, the Lottery may replace the ticket as provided in paragraph (2). This is the sole and exclusive remedy of the holder of the ticket.

CHAPTER 871. POWERBALL

§ 871.21. Future changes to Powerball.

(a) The MUSL reserves the right to modify the Powerball game in order to address changes in player participation or population of member states. If the MUSL decides to make a change, it will be publicly announced by the Secretary at least 30 days before the change takes effect.

(b) The Secretary will publish notice of the change in the *Pennsylvania Bulletin* and the change will be codified in § 871.22 (relating to changes to Powerball).

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