

PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Commencement of Mercury Rulemaking Public Involvement Plan

On August 9, 2004, Citizens for Pennsylvania's Future (PennFuture) filed a petition with the Environmental Quality Board (Board) on behalf of various organizations "requesting action to reduce the high emissions of mercury to the air from Pennsylvania's electric utilities." The petitioners requested a mercury control level of at least 90% or 3.00 mg/MW-hr per electric generating unit with compliance by December 15, 2007.

The Department of Environmental Protection (Department) on August 15, 2005, recommended to the Board that a PA-specific mercury regulation be developed with significant public involvement. The rulemaking process would: (1) examine mercury emission reduction strategies for electric generating units; (2) encourage the burning of cleaner coal of this Commonwealth and discourage fuel switching; and (3) consider capacity and reliability concerns for delivery of power over the grid. By a 16-3 vote, the Board approved the Department's recommendation to develop a "State-specific" mercury emission control regulation. The motion was amended as follows: "During the development of its regulatory proposal, the Department will confer with various stakeholders including, but not limited to, the Pennsylvania Chamber of Business and Industry, Pennsylvania Chemical Industry Council, Associated Petroleum Industries of Pennsylvania, Pennsylvania Manufacturers Association, Industrial Energy Users of Pennsylvania, Electric Power Generation Association, Pennsylvania Coal Association, United Mine Workers of America, Air Quality Technical Advisory Committee, Citizens Advisory Council, the petitioners and other representatives of the potentially regulated community."

Purpose of Public Involvement:

The Mercury Rulemaking Public Involvement process is being initiated to consult with a diverse group of public and private sector individuals, including representatives of the petitioners, industry and trade associations. The primary objectives of the public involvement process are to:

- 1) Discuss key information relevant to a "State-specific" mercury regulation.
- 2) Obtain recommendations on the technical aspects of the proposed rulemaking, including control levels, testing, monitoring, recordkeeping and reporting and compliance schedules.

It is important to discuss the available background information on mercury emissions, deposition and control technology as well as the costs and benefits of the regulation. To this end, the Department will hold a series of meetings with the Mercury Rule Workgroup (Workgroup) including representatives of the Air Quality Technical Advisory Committee (AQTAC) and the Citizens Advisory Council (CAC) to discuss information and issues relevant to the development of Pennsylvania's mercury rulemaking. The first part of the Workgroup process will involve discussion of available background information on

mercury emissions, deposition and control technology as well as the costs and benefits of the regulation. The second part of this process will address issues related to the development of the proposed mercury rulemaking.

Public Involvement Meetings

Beginning in October 2005, the AQTAC and the CAC will jointly host several Workgroup meetings, on behalf of the Department, to facilitate discussions and stakeholder perspectives concerning the mercury rulemaking process. The meetings will provide a forum for the discussion of the Workgroup's perspectives and other topics of interest including mercury emissions, transport and deposition, global/local impacts, hot spots, speciation, control equipment, electric system reliability, costs and benefits, compliance timeframes and any other topics germane to the mercury rulemaking process. The Department's Air Quality staff will attend the Workgroup meetings to review available data and issues of concern. In addition, the staff will seek the input of the Workgroup during the development of the draft regulation. An independent record of the meetings will be made to allow the Department staff to focus on the discussion and regulation development.

The first Workgroup meeting will be held on October 14, 2005, from 9 a.m. to 3 p.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg. Additional meetings will be scheduled at the October 14 meeting. Materials related to the mercury petition and rulemaking process, including a list of Workgroup participants and notices of Workgroup meetings, will be posted on the Department's mercury webpage at www.dep.state.pa.us, (Keyword: "mercury rule") for availability to the general public. Meeting notices will also be published in the Department's *Daily Update*, which can be accessed at www.depesf.state.pa.us/news/site/default.asp.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-1851. Filed for public inspection October 7, 2005, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 18]

Respiratory Care Continuing Education

The State Board of Medicine (Board) proposes to amend §§ 18.302 and 18.309 (relating to definitions; and renewal of certification) and add §§ 18.309a and 18.309b (relating to requirement of continuing education; and approved educational programs) to read as set forth in Annex A.

A. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The completion of continuing education hours will be required to renew a certification as a respiratory care practitioner beginning with the January 1, 2007, biennial renewal.

B. *Statutory Authority*

The proposed rulemaking implements the act of July 2, 2004 (No. 55, P. L. 484) (Act 55), which directs the Board

to adopt, promulgate and enforce regulations that establish requirements for continuing education to be met by individuals holding certification as respiratory care practitioners in this Commonwealth.

Disciplinary procedures for failure to comply would be addressed by way of amendments to § 16.61 (relating to unprofessional and immoral conduct) which will be proposed in the future as a part of the regulatory package for the implementation of the act of December 10, 2001 (No. 92, P. L. 859), which authorizes the Board to promulgate regulations that define the certification, circumstances and protocol under which a certified athletic trainer may perform athletic training services and define the supervision and personal direction required by the standards of acceptable medical practice embraced by the medical doctor community in this Commonwealth.

C. *Background and Purpose*

Act 55, which became effective August 31, 2004, amended the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.1—422.51a) by adding section 36.1(f) of the act (63 P. S. § 436.1(f)) to provide for the continuing education of respiratory care practitioners. The Board now proposes these amendments to establish requirements for continuing education for respiratory care practitioners.

D. *Description of Proposed Rulemaking*

Section 18.302 would be amended to set forth acronyms used in the proposed amendments for Nationally recognized organizations that provide and certify courses and programs in respiratory therapy.

Section 18.309 would be amended to reflect the requirement for continuing education in § 18.309a.

Section 18.309a would set forth the requirement of continuing education. This section requires attendance at and completion of 20 credit hours each biennial cycle for renewal or reactivation of licensure. There is also provision for exemptions and waivers. Section 18.309b would designate Nationally recognized providers of respiratory care training as the approved providers for and certifiers of the continuing education credits.

E. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no quantifiable adverse fiscal impact on the Commonwealth or its political subdivisions.

F. *Sunset Date*

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

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act, (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the

General Assembly, and the Governor of comments, recommendations or objections raised.

H. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Sabina I. Howell, Board Counsel, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed rulemaking in the *Pennsylvania Bulletin*.

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

Fiscal Note: 16A-4921. 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 18. STATE BOARD OF MEDICINE

Subchapter F. RESPIRATORY CARE PRACTITIONERS

§ 18.302. Definitions.

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

AARC—American Association for Respiratory Care, an organization which provides and approves continuing professional development programs.

AMA—American Medical Association, an organization which provides and approves continuing professional development programs.

AOA—American Osteopathic Association, an organization which provides and approves continuing professional development programs.

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CSRT—Canadian Society of Respiratory Therapists, an organization which provides and approves continuing professional development programs.

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§ 18.309. Renewal of certification.

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(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner prescribed by the Board, **complete the continuing education requirement as set forth in § 18.309a (relating to requirement of continuing education)** and pay the required fee prior to the expiration of the next biennium.

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§ 18.309a. Requirement of continuing education.

The following continuing education requirements shall be completed each biennial cycle, commencing with the biennial period ending December 31, 2006:

(1) An applicant for biennial renewal or reactivation of certification is required to complete, during the 2 years preceding the application for renewal or reactivation, a minimum of 20 hours of continuing education as set forth in section 36.1(f)(2) of the act (63 P. S. § 422.36.1(f)).

(2) A certificateholder is exempt from the continuing education requirement for the first biennial renewal period subsequent to initial certification.

(3) The Board may waive the requirements of continuing education in cases of serious illness, or other demonstrated hardship or military service. It shall be the duty of each certificateholder who seeks a waiver to notify the Board in writing and request the waiver prior to the end of the renewal period. The Board will grant, deny or grant in part the request for waiver and will send the certificateholder written notification of its approval or denial in whole or in part of the request. A certificateholder who requests a waiver may not practice as a respiratory care practitioner after the expiration of the certificateholder's current certificate until the Board grants the waiver request.

(4) A licensee shall maintain the information and documentation supporting completion of the hours of continuing education required, or the waiver granted, for at least 2 years from the commencement of the biennial renewal period to which the continuing education or waiver applies.

§ 18.309b. Approved educational courses.

(a) The Board approves respiratory care continuing education programs designated for professional development credits by the AARC, the AMA, the AOA and the CSRT. The courses, locations and instructors provided by these organizations for continuing education in respiratory care are deemed approved by the Board. Qualifying AMA continuing education programs shall be in AMA PRA Category I as defined in § 16.1 (relating to definitions) and qualifying AOA continuing education programs shall be in Category 1A and 1B.

(b) Advanced course work in respiratory care successfully completed at a degree-granting institution of higher education approved by the United States Department of Education which offers academic credits is also approved for continuing education credit by the Board. Proof of completion of the academic credits shall be submitted to the Board for determination of number of credits completed.

(c) The Board will not accept courses of study which do not relate to the clinical aspects of respiratory care, such as studies in office management and financial procedures.

[Pa.B. Doc. No. 05-1852. Filed for public inspection October 7, 2005, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Fees for Approval of Nursing Education Programs

The State Board of Nursing (Board) proposes to amend §§ 21.5, 21.147 and 21.253 (relating to fees) to read as set forth in Annex A. The proposed rulemaking will update the fees charged for the approval of nursing education programs.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed rulemaking is authorized under section 11.2 of the Professional Nursing Law (RN act) (63 P. S. § 221.2) and section 17.5 of the Practical Nurse Law (PN act) (63 P. S. § 667.5).

Background and Need for the Proposed Rulemaking

The Board provides various services to licensees, applicants and nursing schools for which fees are charged. Section 6.1 of the RN act (63 P. S. § 216.1), regarding approval of professional nursing education programs, section 9 of the PN act (63 P. S. § 659), regarding approval of practical nursing education programs, and section 8.1 of the RN act (63 P. S. § 218.1), regarding qualifications for certified registered nurse practitioners (CRNPs), approved programs of education, require the Board to approve nursing education programs. Under this statutory authority, the Board has promulgated regulations detailing the requirements of approved programs of nursing education in §§ 21.31–21.126 and 21.161–21.234. The Board anticipates the promulgation of a final-form rulemaking regarding the approval of CRNP education programs later this year. See 34 Pa.B. 4890 (September 4, 2004).

The Board reviews nursing educational programs with the assistance of its nursing education advisors, who are individuals with a minimum of a master's degree in nursing in accordance with section 2.1(i) of the RN act (63 P. S. § 212.1(i)). The procedure for reviewing an application for approval of a new nursing education program requires that the Board staff conduct an in-depth review and analysis of the application, including review of the budget, curriculum, faculty and clinical experiences. In addition, Board staff conducts a site survey and reviews the physical facilities, such as classroom space, library holdings and nursing equipment. The amended fees associated with this approval process are directly tied to the administrative cost of reviewing and analyzing the application and surveying the program.

In 1991, the Board established fees for the approval of professional and practical nursing education programs at 21 Pa.B. 5521 (November 30, 1991). The fees were amended in 1993, to their current levels of \$475 for professional and practical nursing education programs. See 23 Pa.B. 5634 (November 27, 1993). The Board charges CRNP programs seeking approval the same fee.

Since 1993, the time expended by the Board staff to review each program has increased dramatically. Many of the proposals from the past 2 years to develop nursing education programs at the professional and practical nurse level have come from individuals with little or no background in nursing education. This is due in part to the recent need for new nursing education programs, which is directly related to the need to educate more nurses because of the nursing shortage. The inexperience of the new program developers has led to greatly increased involvement of the nursing education advisors in planning curriculum and clinical experiences, and overseeing the creation of facilities for nursing education programs. It has become common for the Board staff to review and offer advice on multiple draft proposals before the proposals are ready to be presented to the Board.

The Board sets fees, other than biennial renewal fees that support the general operations of the Board, based on the actual cost of providing services. The Office of Revenue conducted a study of the average services provided to nursing education programs seeking Board approval and determined that the fee for approval of

professional and practical nursing education programs should be set at \$935 and the fee for approval of CRNP education programs should be set at \$735. Previously, CRNP education programs were charged the same as professional nursing education programs under § 21.5. To keep all provisions related to CRNPs in Subchapter C of the Board's regulations, the Board will place the fee for CRNP program approval in § 21.253.

Description of Proposed Amendments

The proposed amendments would raise the fee for approval of professional and practical nursing education programs from \$475 to \$935. The proposed rulemaking would raise the fee for approval of CRNP education programs from \$475 to \$735.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would increase the fee for approval of professional and practical nursing education programs by \$460. From 1993 to 2004, the Board has approved approximately 13 new professional nursing programs and 12 new practical nursing programs. If the numbers are consistent for the next 11-year time period, the overall increase will be \$11,500 or \$1,045 per year. The proposed rulemaking would increase the fee for CRNP nursing education programs by \$260. The Board has approved 30 CRNP nursing education programs since 1993 and anticipates only a handful of new CRNP programs over the next 11 years. The Board will realize savings to its general operating budget by having the fee for the service of approving nursing education programs accurately reflect the cost of the service provided. There is no fiscal impact on the Commonwealth from the proposed rulemaking.

The proposed rulemaking will not create or reduce paperwork requirements for nursing education programs seeking approval or for the Board. There are no paperwork requirements on the Commonwealth regarding the approval of nursing education programs.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator,

State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JANET HUNTER SHIELDS, MSN, CRNP, CNS,
Chairperson

Fiscal Note: 16A-5127. 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 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.5. Fees.

(a) The following fees are charged by the Board:

	* * * * *
Application for approval of new nursing program.....	§ [475] 935
	* * * * *

**Subchapter B. PRACTICAL NURSES
GENERAL PROVISIONS**

§ 21.147. Fees.

(a) The following fees are charged by the Board:

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Application for approval of new nursing program.....	§ [475] 935
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Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS

GENERAL PROVISIONS

§ 21.253. Fees.

The following fees are charged by the Board:

	* * * * *
Application for approval of new nursing program.....	\$735

[Pa.B. Doc. No. 05-1853. Filed for public inspection October 7, 2005, 9:00 a.m.]

**STATE BOARD OF
OSTEOPATHIC MEDICINE**

[49 PA. CODE CH. 25]

Respiratory Therapists

The State Board of Osteopathic Medicine (Board) proposes to amend §§ 25.502 and 25.509 (relating to definitions; and renewal of certification) and add §§ 25.509a and 25.509b (relating to requirement of continuing education; and approved educational programs) to read as set forth in Annex A.

A. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

The proposed rulemaking implements the act of July 2, 2004 (No. 56, P. L. 486) (Act 56), which directs the Board to adopt, promulgate and enforce regulations that establish requirements for continuing education to be met by individuals holding certification as respiratory therapists in this Commonwealth.

C. *Background and Purpose*

Act 56, which became effective August 31, 2004, amended the Osteopathic Medical Practice Act (act) (63 P. S. §§ 271.1—271.18) by adding section 10.2(f) of the act (63 P. S. § 271.10b(f)) to provide for the continuing education of respiratory therapists. The Board now proposes these regulations to establish requirements for completion of continuing education for the practice of respiratory therapists.

D. *Description of Proposed Rulemaking*

Section 25.502 would be amended to provide definitions relevant to the continuing education requirements.

Section 25.509 would be amended to require certificateholders to comply with continuing education requirements to renew their certificates. Section 25.509a would be added to set forth the requirement that an applicant for biennial renewal or reactivation of certification shall complete 20 credit hours of continuing education during the previous biennial renewal period. In addition, this section provides for exemption from the continuing education requirement for the first biennial renewal period after initial certification and provides for waiver of the requirements in cases of serious illness, undue hardship or military service.

Section 25.509b would provide that the Board approves respiratory care continuing education programs designated for professional development credits by the American Association of Respiratory Care, the American Medical Association (AMA), the American Osteopathic Association (AOA) and the Canadian Society of Respiratory Therapists. AMA programs must be in AMA PRA Category I credits and qualifying AOA continuing education programs must be in Category I-A or I-B credits, as defined in § 25.1 (relating to definitions). Subsection (b) would provide that advanced course work in respiratory care successfully completed at a degree-granting institution of higher education approved by the United States Department of Education which offers academic credits would also be approved for continuing education credit by the Board. Subsection (c) would notify certificate holders that the Board will not accept courses of study which do not relate to the actual provision of respiratory care. Examples of unacceptable courses are those in office management and finances.

E. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would have a fiscal and paperwork impact on the Commonwealth in that the Board would incur costs related to reviewing and approving continuing education courses for respiratory care practitioners.

F. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Beth Sender Michlovitz, Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

OLIVER C. BULLOCK, D.O.,
Chairperson

Fiscal Note: 16A-5317. 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 K. RESPIRATORY CARE PRACTITIONERS

§ 25.502. Definitions.

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

AARC—American Association for Respiratory Care, an organization which provides continuing professional development programs.

AMA—American Medical Association, an organization which provides continuing professional development programs.

AOA—American Osteopathic Association, an organization which provides continuing professional development programs.

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CRST—Canadian Society of Respiratory Therapists, an organization which provides continuing professional development programs.

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§ 25.509. **Renewal of certification.**

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(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner prescribed by the Board [and], pay the required fee and comply with the continuing education requirement of § 25.509a (relating to requirement of continuing education), prior to the expiration of the [next] current biennium.

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§ 25.509a. **Requirement of continuing education.**

(a) Commencing with the biennial period beginning November 1, 2008, an applicant for biennial renewal or reactivation of certification is required to complete, during the 2 years preceding renewal or reactivation, a minimum of 20 hours of continuing education as set forth in section 10.2 of the act (63 P. S. § 271.10b).

(b) A certificateholder is exempt from the continuing education requirement for the first biennial renewal period subsequent to initial certification.

(c) The Board may waive the requirements of continuing education in cases of serious illness, undue hardship or military service. It shall be the duty of each certificateholder who seeks a waiver to notify the Board in writing and request the waiver prior to the end of the renewal period. The Board will grant, deny or grant in part the request for waiver and will send the certificateholder written notification of its approval or denial of the waiver request. A certificateholder who requests a waiver may not practice as a respiratory care practitioner after the expiration of the certificateholder's current certificate until the Board grants the waiver request.

(d) A certificateholder shall maintain the information and documentation concerning compliance with the continuing education requirement or the waiver granted for at least 2 years.

§ 25.509b. **Approved educational programs.**

(a) The Board approves respiratory care continuing education programs designated for professional development credits by the AARC, the AMA, the AOA and the CSRT.

(1) Qualifying AMA continuing education programs shall be in AMA PRA Category I credits, as defined in § 25.1 (relating to definitions).

(2) Qualifying AOA continuing education programs shall be in Category I-A or I-B credits, as defined in § 25.1.

(b) Advanced course work in respiratory care successfully completed at a degree-granting institution of higher education approved by the United States Department of Education which offers academic credits are also approved for continuing education credit by the Board.

(c) The Board will not accept courses of study which do not relate to the actual provision of respiratory care. Examples of unacceptable courses are those in office management and financial procedures.

[Pa.B. Doc. No. 05-1854. Filed for public inspection October 7, 2005, 9:00 a.m.]

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 48 AND 49]

Child Abuse Reporting Requirements

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to add §§ 48.51—48.57 and 49.51—49.57 to read as set forth in Annex A. The proposed regulations relate to child abuse reporting requirements pertaining to licensed marriage and family therapists and licensed professional counselors.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The Board is authorized to adopt regulations necessary for the administration of its enabling statute under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P. S. § 1906(2)) and 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) (CPSL), specifically sections 6311(b) and 6383(b)(2) of the CPSL (relating to persons required to report suspected child abuse; and education and training).

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Background and Purpose

The proposed regulations are responsive to the statutory mandate of section 6383(b)(2) of the CPSL, which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations on the responsibilities of mandated reporters. The mandated reporters enumerated in section 6311(b) of the CPSL include mental health professionals. The Board has fulfilled its rulemaking responsibilities pertaining to licensed social workers. With the enactment of the act of December 21, 1998 (No. 136, P. L. 1017), which created the new licensure classifications of marriage and family therapists and professional counselors, the Board now intends to promulgate similar reporting provisions for licensed marriage and family therapists and professional counselors.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed rulemaking.

§§ 48.51 and 49.51. Definitions relating to child abuse reporting requirements.

Definitions are proposed in §§ 48.51 and 49.51 for the following words and phrases used throughout the regulations: "child abuse," "ChildLine," "individual residing in the same home as the child," "perpetrator," "person responsible for the child's welfare," "recent acts or omis-

sions," "serious mental injury," "serious physical injury" and "sexual abuse or exploitation." With the exception of the definition of "ChildLine" which is tailored after the Department of Public Welfare's definition found in 55 Pa. Code § 3490.4 (relating to definitions), the proposed definitions provided for the terms are those contained in section 6303 of the CPSL (relating to definitions).

§§ 48.52 and 49.52. Suspected child abuse—mandated reporting requirements.

Proposed §§ 48.52 and 49.52 announce mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. Subsection (a) states the general rule that licensed marriage and family therapists and licensed professional counselors who come into contact with children shall make a report of suspected child abuse. Subsection (b) states the reporting requirements under section 6311(c) of the CPSL for licensed marriage and family therapists and professional counselors who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, state the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedure). Proposed subsection (c) instructs licensees that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency.

§§ 48.53 and 49.53. Photographs, medical tests and X-rays of child subject to report.

Under section 6314 of the CPSL (relating to photographs, medical tests and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed §§ 48.53 and 49.53 advises licensed marriage and family therapists and professional counselors of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§§ 48.54 and 49.54. Suspected death as a result of child abuse—mandated reporting requirement.

Section 6317 of the CPSL (relating to mandatory reporting and postmortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed §§ 48.54 and 49.54 advise licensed marriage and family therapists and professional counselors of this statutory mandate.

§§ 48.55 and 49.55. Immunity from liability.

Proposed §§ 48.55 and 49.55 advise licensed marriage and family therapists and professional counselors that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the licensed marriage and family therapist's or professional counselor's actions. The proposed sections also inform licensed marriage and family therapists and licensed professional counselors that under section 6318 of the CPSL, the good

faith of the licensed marriage and family therapist or licensed professional counselor will be presumed for the purpose of any civil or criminal proceeding. The Board also proposes in §§ 48.55 and 49.55 to extend the good faith presumption to disciplinary proceedings against a licensed marriage and family therapist or licensed professional counselor that results by reason of the licensed marriage and family therapist's or professional counselor's actions in participating in good faith in the making of a report of suspected child abuse.

§§ 48.56 and 49.56. Confidentiality—waived.

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Sections 48.56 and 49.56 propose to address this statutory mandate by clarifying that the child abuse reporting requirements announced in these chapters take precedence over any client confidentiality, ethical principle or professional standard that might otherwise apply.

§§ 48.57 and 49.57. Noncompliance.

Proposed §§ 48.57 and 49.57 advise licensed marriage and family therapists and licensed professional counselors of the consequences of noncompliance with the child abuse reporting requirements of §§ 48.52—48.54 and §§ 49.52—49.54 (relating to suspected child abuse-mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse-mandated reporting requirement). As proposed, licensed marriage and family therapists and licensed professional counselors are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 11 of the act (63 P. S. § 1911). Subsection (b) advises licensed marriage and family therapists and professional counselors of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report), for the same willful noncompliance with the reporting requirements.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, licensed marriage and family therapists and professional counselors may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed regulations.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC), and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recom-

mendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations and objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Sandra Matter, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

RONALD E. HAYS,
Chairperson

Fiscal Note: 16A-6910. 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 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS

CHILD ABUSE REPORTING REQUIREMENTS

§ 48.51. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 48.52—48.57 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Child abuse—The term includes any of the following:

- (i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.
- (ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare, which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the

welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—

(i) A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

(ii) The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

§ 48.52. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed marriage and family therapists who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Licensed marriage and family therapists who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the licensed marriage and family therapist, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 48.53. Photographs, medical tests and X-rays of child subject to report.

A licensed marriage and family therapist may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 48.54. Suspected death as a result of child abuse—mandated reporting requirement.

A licensed marriage and family therapist who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 48.55. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a licensed marriage and family therapist who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or

the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the licensed marriage and family therapist's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensed marriage and family therapist shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensed marriage and family therapist's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 48.56. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 48.52—48.54 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply.

§ 48.57. Noncompliance.

(a) *Disciplinary action.* A licensed marriage and family therapist who willfully fails to comply with the reporting requirements in §§ 48.52—48.54 (relating to suspected child abuse mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P. S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a licensed marriage and family therapist who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS

CHILD ABUSE REPORTING REQUIREMENTS

§ 49.51. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 48.52—48.57 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate

medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare, which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—

(i) A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

(ii) The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

§ 49.52. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed professional counselors who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Licensed professional counselors who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the

course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the licensed professional counselor, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 49.53. Photographs, medical tests and X-rays of child subject to report.

A licensed professional counselor may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 49.54. Suspected death as a result of child abuse—mandated reporting requirement.

A licensed professional counselor who has reasonable cause to suspect that a child died as a result of child

abuse shall report that suspicion to the coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 49.55. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a licensed professional counselor who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the licensed professional counselor's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensed professional counselor shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensed professional counselor's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs

§ 49.56. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 49.52—49.54 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply.

§ 49.57. Noncompliance.

(a) *Disciplinary action.* A licensed professional counselor who willfully fails to comply with the reporting requirements in §§ 49.52—49.54 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P. S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a licensed professional counselor who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 05-1855. Filed for public inspection October 7, 2005, 9:00 a.m.]

**[49 PA. CODE CHS. 47 AND 49]
Licensure Technical Amendments**

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to amend §§ 47.1, 47.1a, 47.11, 47.12a and 49.1 to read as set forth in Annex A. The proposed rulemaking makes editorial changes, corrects outdated provisions and clarifies the Board's position that graduates of social work programs that are in candidacy for accreditation may apply for licensure once the program obtains accreditation.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed rulemaking is authorized under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)) and section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3(a)).

Background and Purpose

Section 7(a) of the act (63 P. S. § 1907(a)) requires that an applicant for social work license submit proof that, among other things, the applicant has received a master's degree from an accredited school of social work or social welfare or a doctoral degree in social work. The Board has been made aware that the Council on Social Work Education (CSWE) accredits social work programs rather than schools. Accordingly, the Board proposes to amend the definition of "accredited school" in § 47.1 (relating to definitions) to mean a graduate program in social work or social welfare accredited by the CSWE.

Section 47.1a (relating to qualifications for supervisors) provides three options for becoming qualified as a supervisor. Paragraph (3) allows an individual to qualify, until January 1, 2006, by, among other things, holding a license to practice as a social worker in this Commonwealth. The Board has received comments from individual applicants indicating that this requirement is overly restrictive in that it prevents an applicant who obtained supervisory experience in another state from using that experience to qualify for licensure in this Commonwealth. The Board, therefore, proposes to amend this provision to delete the requirement that a supervisor, under § 47.1a(3)(iii), hold a license in this Commonwealth.

The Board was recently informed that the Association of Social Work Boards (ASWB) is changing the name of its social work licensure examination from the "intermediate" level examination to the "master's" level examination and is changing its examination for a provisional license from the "basic" level examination to the "bachelor's" level examination. Accordingly, the Board proposes to change the names of these examinations in § 47.11(a) and (b) (relating to licensure examination).

Section 7(d)(2)(ii) of the act requires an applicant for clinical social work license to hold a license as a social worker. The Board is aware that many applicants for social work licensure are applying only because holding the license is a prerequisite for becoming licensed as a clinical social worker. These applicants have asked whether they might be permitted to complete the clinical social work examination rather than the social work license examination. Because the Board recognizes that the clinical social work examination is an "umbrella" examination which encompasses social work as well as clinical social work knowledge, the Board is proposing to amend § 47.11(a) to give applicants for social work licenses the option of completing the ASWB master's level examination or the ASWB clinical level examination.

Section 47.12a(a) (relating to licensed social worker) requires that an applicant for licensure as a social worker have, among other things, a master's degree in social work or social welfare from a school which was an accredited school on the date the degree was awarded or a doctoral degree in social work. The Board has received numerous communications from a member of the public

involved in social work education who has raised the concern that the Board is licensing graduates of social work programs that are in candidacy for accreditation but have not yet obtained accreditation. The Board is aware that the process for a program to obtain accreditation is sometimes lengthy and a program can remain on "in candidacy" status for some time. The Board is also aware that once a program obtains full accreditation, the accreditation reverts back to the graduating classes of students who were admitted during or after the program was granted candidacy. The Board recognizes that if it were to fail to license graduates of programs that were in candidacy for accreditation, it would result in the failure to establish new social work programs because students would not attend programs unless they were already fully accredited. Accordingly, the Board is proposing to amend § 47.12a(2) to provide notice that beginning 2 years after the effective date of this amendment an applicant for licensure must have received a master's degree in social work or social welfare from a program which was an accredited program on the date the degree was awarded or a doctoral degree in social work. In addition, students who graduate from social work or social welfare master's degree programs that are in candidacy for accreditation at the time of their graduation may apply for licensure once the program obtains accreditation.

The Board is proposing to delete the definition in § 49.1 (relating to definitions) of "CACREP" because the acronym is not referred to elsewhere in the regulations and the Board mistakenly included this definition in its regulations.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no fiscal impact and imposes no additional paperwork requirements on the Board or its licensees.

The proposed rulemaking should not impose any legal, accounting or reporting requirements on the regulated community.

Predraft Comments

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and regulated population. The Board solicited predraft input on this proposed rulemaking from licensees, professional associations and educational programs. The Board received approximately five comments to the draft. The Board considered these comments in developing proposed rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to publication of the final-form

rulemaking, by the Board, the General Assembly, and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Sandra Matter, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-699, Technical Licensure Amendments, when submitting comments.

RONALD HAYS,
Chairperson

Fiscal Note: 16A-699. 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 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

GENERAL PROVISIONS

§ 47.1. Definitions.

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

* * * * *

Accredited school—A graduate [**school**] **program in social work or social welfare** accredited by the Council on Social Work Education.

* * * * *

§ 47.1a. Qualifications for supervisors.

To qualify as a supervisor, an individual shall meet one of the following criteria:

* * * * *

(3) Until January 1, 2006, the following criteria:

* * * * *

(iii) Hold a license to practice as a social worker in this Commonwealth **or in another state.**

LICENSURE

§ 47.11. Licensure examination.

(a) The examination required as a prerequisite to original licensure as a licensed social worker is the Association of Social Work Boards' (ASWB) (formerly known as the American Association of State Social Work Boards' (AASSWB)) [**intermediate**] **master's level examination or the ASWB clinical level examination.**

(b) The examination required as a prerequisite to being granted a license to hold oneself out as a social worker with a provisional license is the ASWB (formerly known as AASSWB) [**basic**] **bachelor's level examination.**

* * * * *

§ 47.12a. Licensed social worker.

(a) To be issued a license to hold oneself out as a licensed social worker, an applicant shall provide proof satisfactory to the Board, that the applicant has met the following conditions:

* * * * *

(2) [**Received**] **Beginning** _____ (*Editor's Note:* The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.), **received** a master's degree in social work or social welfare from a school which was an accredited school on the date the degree was awarded or a doctoral degree in social work. **Students who graduate from social work or social welfare master's degree programs that are in candidacy for accreditation at the time of their graduation may apply for licensure once the program obtains accreditation.**

* * * * *

CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS

GENERAL PROVISIONS

§ 49.1. Definitions.

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

* * * * *

[**CACREP—Council for Accreditation of Counseling and Related Programs.**]

* * * * *

[Pa.B. Doc. No. 05-1856. Filed for public inspection October 7, 2005, 9:00 a.m.]