

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PSYCHOLOGY [49 PA. CODE CH. 41] Biennial Renewal Fee Increase

The State Board of Psychology (Board) amends § 41.12 (relating to fees). The amendment increases the biennial license renewal fee for psychologists from \$120 to \$300.

Statutory Authority

The amendment is authorized under section 3.3(a) of the Professional Psychologists Practice Act (act) (63 P. S. § 1203.3(a)). It requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures. The new fee will be effective for the biennial period commencing December 1, 2005.

Response to Comments

Notice of proposed rulemaking was published at 35 Pa.B. 1582 (March 5, 2005). Publication was followed by a 30-day public comment period during which the Board received one public comment from the Pennsylvania Psychological Association in support of the proposal. Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC). On May 4, 2005, the Independent Regulatory Review Commission (IRRC) advised that it had no comments, questions or recommendations to the regulation. The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). The following is in response to the comment submitted by the HPLC.

The HPLC noted that the Board's increased expenses occurred primarily in the areas of hearing examiner and legal office costs. The HPLC requested additional information about the types of cases that are referred to hearing examiners, the number of hearing examiners hearing Board cases and the number of hours expended by the hearing examiners on Board matters. The Board reviews each order to show cause and determines whether to hear the case or delegate it to a hearing examiner. Generally criminal convictions, reciprocal discipline, continuing education violations and application cases are delegated to the Department of State Office of Hearing Examiners. Five full-time hearing examiners are assigned to that office. In Fiscal Year (FY) 03-04, the Hearing Examiners Office reported 362.14 hours dedicated to hearing board matters. The Board delegated 30 cases to hearing examiners from July 1, 2002, to July 1, 2004.

The HPLC also asked for a more detailed breakdown of the Board's legal expenditures and a list of other Board expenditures and projected expenditures, including the administrative fees which are paid to the Department of State. The following chart sets out the Board's expenditures. For ease of reference, the categories are described in detail preceding the chart.

Board Administration: Timesheet based staff expenses (personnel, operating and fixed assets) for the licensing divisions in the Bureau of Professional and Occupational Affairs (Bureau). Direct charges, that is printing and mailing costs for boards and commissions newsletters, renewal notices, informational handouts, acts, rules and regulations are included in this cost category. Operating and fixed assets expenses that are distributed based on their benefit to the board using licensee population such as License 2000, printed forms, office supplies and inter-agency billings (that is, Civil Service Commission, Comptroller's Office, and the like). Test administration staff (staff) expenses (direct charges) may include freight charges for overnight delivery services and occasional travel charges incurred by the staff.

Commissioner's Office: Timesheet-based staff expenses (personnel, operating and fixed asset charges) for those staff assigned to Commissioner's Office and Revenue Office.

Departmental Services: Timesheet-based charges for support provided by the various support offices within the agency. These include the Executive Office, which consists of offices of the Secretary of the Commonwealth, the Deputy Secretary of Regulatory Programs, Chief of Staff, Deputy Secretary of Administration, Chief Counsel, Communications and Public Information, and Legislative Affairs Offices. In addition, costs are itemized by the offices of Bureau of Management Information Services, Bureau of Finance and Operations and Human Resources.

Legal Office: Timesheet-based staff expenses (personnel, operating and fixed assets) for board counsel, board prosecutors, complaints office and support staff. Examples of direct charges are expert witness services, advertising costs of license suspensions, revocations or fines assessed.

Hearing Expense: Timesheet-based staff expenses (personnel, operating and fixed assets) for staff assigned to the Hearing Examiners' Office. There are also direct charges for hearing related expenses such as court reporting services.

Legislative and Regulatory Analysis: Timesheet-based staff expenses (personnel, operating and fixed assets) for legal review of policy and regulatory matters that affect all boards and commissions.

Enforcement and Investigation: Timesheet-based staff expenses (personnel, operating and fixed assets) are captured for headquarters and the four regional offices, with travel-related expenses listed as a separate line item.

Professional Health Monitoring Program (Client-based): staff expenses (personnel, operating and fixed assets) are distributed based on the number of licensees of the licensing board participating in this program.

Board Member Expenses (Direct charges): Board member per diem, conference registration fees, travel expenses and membership dues for National professional organizations.

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<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>
<i>Cost Category</i>	<i>FY 2003-2004 Budget</i>	<i>Expenses as of 4/26/05</i>	<i>Required to Fiscal Year End</i>	<i>FY 2003-2004 Projected Expenses</i>	<i>Difference from Budgeted</i>
<i>Administrative Costs:</i>					
Board Administration	\$ 99,000.00	\$ 94,816.99	\$ 0.00	\$ 94,816.99	\$ 4,183.01
Commissioner's Office	34,000.00	8,149.92	0.00	8,149.92	25,850.08
Departmental Services	21,000.00	17,488.02	0.00	20,988.02	11.98
<i>Legal Costs:</i>					
Legal Office	189,000.00	214,389.35	0.00	214,489.35	(25,489.35)
Hearing Expenses	11,000.00	28,329.07	0.00	28,329.07	(17,329.07)
Legislative and Regulatory Analysis	1,000.00	2,803.67	0.00	2,803.67	(1,803.67)
<i>Enforcement And Investigation:</i>					
Nontravel	137,500.00	146,686.36	0.00	146,686.36	(9,186.36)
Travel	4,500.00	4,411.51	0.00	4,411.51	88.49
Prof. Health Monitoring Program	7,000.00	1,582.00	0.00	1,582.00	5,418.00
Board Member Expenses	<u>40,000.00</u>	<u>36,782.68</u>	<u>0.00</u>	<u>36,782.68</u>	<u>3,217.32</u>
Total Board Costs:	<u>544,000.00</u>	<u>555,439.57</u>	<u>0.00</u>	<u>559,039.57</u>	<u>(15,039.57)</u>

**State Board of Psychology
FY 02-03 and FY 03-04 Sources of Revenue**

<i>Revenue By Source</i>	<i>FY 02-03 Actual</i>	<i>FY 03-04 Actual</i>	<i>Biennial Total</i>
Renewals	\$ 4,080.00	\$ 658,790.00	\$ 662,870.00
Applications	20,410.00	25,405.00	45,815.00
Letters of Good Standing/Certifications	2,210.00	2,095.00	4,305.00
Fines	11,850.00	27,000.00	38,850.00
Licensee List	<u>1,946.72</u>	<u>2,992.39</u>	<u>4,939.11</u>
Total Revenue	<u>40,496.72</u>	<u>716,282.39</u>	<u>756,779.11</u>

Lastly, the HPLC noted that the Board imposed more disciplinary sanctions in 2003 than in 2002 and asked for a breakdown of the 2003 sanctions by category of offense. The following chart sets out the number and types of actions taken by the Board for calendar year 2003 by complaint type.

Total Actions Involving Failure to Satisfy Continuing Education Requirement	22
Total Actions Involving Unprofessional Conduct	2
Total Actions Involving Unprofessional Conduct	4
Total Cases Involving Conviction of a Crime	1
Total Actions Involving Arrests for Felonies or Misdemeanors	2
Total Actions Involving Practicing on Suspended License	2
Total Actions Involving Practicing Outside Scope of License	1
Total Actions Involving Mental or Physical Impairment	1
Total Actions Involving Disciplinary Action Taken In Another State	1
Total Application Actions Other Than Reinstatement	1
<i>Violation</i>	
Failure to satisfy continuing education	22
Unprofessional conduct	2
Sexual misconduct	4
Conviction of a crime	1

Fiscal Impact and Paperwork Requirements

The amendment will increase the biennial renewal fee for psychologists and will require the Board to alter some of its forms to reflect the new fee. The amendment will have no other adverse fiscal impact or paperwork requirements on the Board, licensees, the Commonwealth, its political subdivisions or the public sector.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population. Accordingly, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of the notice of proposed rulemaking, published at 35 Pa.B. 1582, on March 5, 2005, to IRRC and the Chairpersons of the SCP/PLC and the HPLC for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC, the SCP/PLC and the HPLC with copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the SCP/PLC, the HPLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), this final-form rulemaking was approved by the HPLC on September 27, 2005, and deemed approved by the SCP/PLC on October 5, 2005. IRRC deemed the final-form regulation approved on October 5, 2005.

Contact Person

Further information may be obtained by contacting Christina Stuckey, Administrative Assistant, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7155.

Findings

The Board finds that:

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

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

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this Preamble.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending § 41.12 to read as set forth at 35 Pa.B. 1582.

(b) The Board shall submit this order and 35 Pa.B. 1582 to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and 35 Pa.B. 1582 and deposit them with the Legislative Reference Bureau as required by law.

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

ALEX M. SIEGEL, J.D., Ph.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 35 Pa.B. 5893 (October 22, 2005).)

Fiscal Note: Fiscal Note 16A-6316 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-2079. Filed for public inspection November 11, 2005, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1187]

Nursing Facility Rate Limitation

The Department of Public Welfare (Department) adopted an amendment to § 1187.96 (relating to price and rate setting computations) as set forth in Annex A. The authority for the amendment is sections 201(2), 206(2), 403(b), 443.1(5) and 454 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 206(2), 403(b), 443.1(5) and 454) as amended by the act of July 7, 2005 (P. L. 177, No. 42) (Act 42). Act 42 amended, among other things, provisions of the code regarding payment for nursing facility services under the Medical Assistance (MA) Program. More specifically, Act 42 added paragraph (5) to section 443.1 of the code. This paragraph provides that on or after July 1, 2004, and until regulations are otherwise adopted by July 1, 2006, payments to MA nursing facility providers shall be calculated and made as specified in the Department's regulations in effect on July 1, 2003, except as may be otherwise required by the Commonwealth's approved Title XIX plan for nursing facility services and regulations promulgated by the Department under section 454 of the code.

Section 454 of the code, which was also added to the code by Act 42, authorizes the Department to promulgate regulations to establish provider payment rates. Section 454 of the code specifies that, until December 31, 2005, notwithstanding any other provision of law including section 814-A of the code (62 P. S. § 814-A), provider payment rate regulations must be promulgated under section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL), which permits an agency to omit or modify proposed rulemaking when the regulation pertains to Commonwealth grants or benefits. In addition, section 454 of the code expressly exempts these provider payment rate regulations from review under the Regulatory Review Act (71 P. S. §§ 745.1—745.15), and from review by the Attorney General under section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

Justification for Adoption of Final-Omitted Rulemaking

In accordance with sections 443.1(5) and 454 of the code, the Department is adopting the final-omitted rulemaking because:

- As recognized by section 454(b) of the code, the final-omitted rulemaking relates to MA provider payments, which are Commonwealth grants or benefits.

- The final-omitted rulemaking relates to payments for MA nursing facility services provided on or after July 1, 2004.

Purpose

The purpose of this final-omitted rulemaking is to amend the methods and standards used by the Department to compute nursing facility per diem payment rates for the State Fiscal Year (FY) 2005-2006. Specifically, it adds an "adjustment factor" of .95122 to the formula set forth in § 1187.96 (relating to price and rate setting computations) that will be used to set payment rates for FY 2005-2006.

Background

The MA Program pays for nursing facility services provided to MA eligible recipients by participating nursing facilities at per diem rates that are computed using the case-mix payment system set forth in the Department's regulations at Chapter 1187, Subchapter G (relating to rate setting). Each nursing facility's per diem rate is comprised of four rate components, one for each of the three "net operating cost centers": "resident care" costs; "other resident related" costs; "administrative" costs; and a fourth for the "capital" cost center. Each component is separately computed on an annual basis.

To compute the rate components for each of the three net operating cost centers under the case-mix payment system, the Department groups nursing facilities into "peer groups." For each peer group, the Department calculates a "peer group price" for each of the net operating cost centers, which prices are then used to set the amounts of the respective rate components for the individual nursing facilities. The peer group prices and corresponding rate components are based, in part, upon the 3-year rolling average of per diem audited allowable costs set forth in an individual nursing facility's audit reports. Similarly, the amount of a nursing facility's capital cost component is based, in part, upon the amount of its audited allowable costs associated with major movable property and real estate taxes.

Generally, the cost of providing nursing facility services to residents may vary depending on the acuity levels of those residents, that is, higher acuity residents may require additional (and more expensive) services, which may result in nursing facilities incurring higher costs. To address the variable costs that may relate to resident acuity, the case-mix payment system makes a quarterly adjustment to the resident care rate component of each nursing facility's per diem rate. The adjustment reflects the average acuity of the nursing facility's MA residents as determined on a "picture date." See § 1187.96.

The Department pays each MA nursing facility for nursing facility services provided to its MA residents during a fiscal quarter using the facility's adjusted quarterly payment rate for that fiscal quarter.

Between 2000 and 2005, the per diem payment rates produced by the case-mix payment system increased by approximately 5.8% every year, and by 29.4% overall. The Department has determined that, with no adjustment, the payment system will generate per diem rates for FY 2005-2006 that will increase by approximately 7.9% over the prior fiscal year. In June of 2005, the Department anticipated that, given the expected financial resources at its disposal, it would be unable to continue to sustain this pace of inflation, and would have insufficient funds to pay for the estimated quantity of nursing facility services throughout the entire 2005-2006 rate year. To help ensure that funds would be available to cover the entire year, the

Department proposed to place a cap on nursing facility rates at 2.0% above the comparable rates for the preceding (2004-2005) rate year. The notice announcing the proposed change was published at 35 Pa.B. 3267 (June 4, 2005).

In the public notice published at 35 Pa.B. 3267, the Department proposed to limit each MA nursing facility's adjusted quarterly case-mix per diem rate beginning with the July 1, 2005 rate to the lower of:

- The facility's quarterly case-mix per diem rate calculated in accordance with the rate setting methodology in Chapter 1187, Subchapter G; or
- 102% of the average of the facility's final rates for the four quarters of the immediately preceding fiscal year.

Following publication of the Department's proposed rate cap notice, the General Assembly enacted two acts that affect payments for MA nursing facility services in FY 2005-2006. First, the General Assembly enacted Appropriations Act No. 1-A in which it appropriated \$ 4.3 billion in total funds for nursing facility and home and community based services for FY 2005-2006. Second, the General Assembly enacted Act 42, which, as noted, amended the code to authorize the Department to adopt regulations altering its case-mix payment system for FY 2005-2006, and to reform or replace its current payment methodology beginning July 1, 2006. In light of these legislative acts, the Department reevaluated its proposed rate cap and determined that some modifications to its initial proposal were warranted.

First, when the Department initially proposed the rate cap, it intended that the cap might be imposed on a multiple year basis pending the adoption of more comprehensive changes to the case-mix payment methodology. Because Act 42 specifically directs the Department to make those comprehensive changes effective July 1, 2006, the Department has limited application of the rate cap to FY 2005-2006 payment rates. Second, when the Department initially proposed the rate cap, the Department expected that appropriated funds would only permit rates to be increased by 2.0% above the FY 2004-2005 level. Because the General Assembly has appropriated additional funds, the Department can increase the rate cap. This rulemaking will enable payment rates to increase such that the estimated Statewide day-weighted average of the final per diem rates of all MA nursing facilities in FY 2005-2006 will rise by 2.8% over the estimated Statewide day-weighted average final per diem rates of all MA nursing facilities for FY 2004-2005.¹

In addition to these modifications, the Department decided to make other revisions to the proposed rate cap after considering the comments and input it received following publication of its rate cap notice.² As initially proposed, the rate cap would have limited each nursing facility's payment rates in FY 2005-2006 based upon its rates in effect during the prior fiscal year and without consideration of intervening increases in the facility's resident acuity levels. As discussed in greater detail in the Public Process section, the Department has modified the rate cap, consistent with the suggestions offered by

¹ The "Statewide day-weighted average rate" is an estimate of the average rate that the Department pays for nursing facility services during a fiscal year. "Statewide" means that all nursing facility payment rates are included in the calculation. "Day-weighted" means that the average reflects the number of days of care that are paid for at a given rate.

The Statewide day-weighted average rate for FY 2004-2005 is \$166.37. The rate cap implemented by this rulemaking permits the estimated Statewide day-weighted average rate for FY 2005-2006 to increase by 2.8% to \$171.03.

² The Department received 26 letters commenting on the proposed rate cap. The comments and the Department's responses are discussed in the "Public Process" section below.

commentators, to continue to recognize acuity adjustments in accordance with the existing case-mix payment methodology. For FY 2005-2006, the Department will continue to compute the four rate components of each nursing facility's per diem rate and to adjust the resident care rate component of each nursing facility's per diem rate on a quarterly basis by the nursing facility's MA CMI, as specified in Chapter 1187, Subchapter G. Once the Department has determined each nursing facility's adjusted quarterly rate, the Department will apply the rate cap by multiplying the nursing facility's adjusted quarterly rate by .95122. In this manner, each nursing facility's per diem rate will continue to fluctuate in accordance with changes in the average acuity of its MA residents while, at the same time, all nursing facility per diem rates will be adjusted as necessary to insure that MA nursing facility payment rate increases Statewide are capped at 2.8%.

Requirements

Section 1187.96. Price and rate setting computations.

This section is amended by adding a new paragraph (2) to subsection (e). As specified in subsection (e)(2), for each quarter of the FY 2005-2006, an MA nursing facility's per diem rate will be computed and adjusted to reflect MA resident acuity as specified in Chapter 1187, Subchapter G and then multiplied by .95122. The Department will make payments to the MA nursing facility for nursing facility services rendered to MA residents during a fiscal quarter using the nursing facility's capped adjusted quarterly rate for that quarter.

Affected Individuals and Organizations

Nursing facilities enrolled and participating in the MA Program will be affected by this rulemaking.

Accomplishments and Benefits

This rulemaking benefits citizens of this Commonwealth, including MA long-term care consumers, because it moderates the amount by which payment rates for nursing facility services will increase in FY 2005-2006 consistent with the fiscal resources of the Commonwealth, while still providing payment rate increases sufficient to assure that consumers will continue to have access to medically necessary nursing facility services.

Fiscal Impact

This rulemaking modifies the payment rates that the Department would have otherwise set for MA nursing facility services for FY 2005-2006 under the case-mix payment system so that on average the payment rates for all MA nursing facilities in FY 2005-2006 will not increase by more than 2.8% from the prior fiscal year.

Paperwork Requirements

No new or additional paperwork requirements result from adoption of the regulation.

Public Process

Federal law requires that the Department undertake a public process whenever it proposes to change how it sets payment rates for nursing facility services so that providers, consumers and other concerned State residents have a reasonable opportunity to comment on the Department's proposed changes. See 42 U.S.C.A. § 1396a(a) (13)(A). In compliance with this Federal requirement, the Department has taken several steps to solicit input from affected stakeholders and the public.

As previously noted, the Department published an advance public notice at 35 Pa.B. 3267, in which it

announced its intent to amend its State Plan to change its methods and standards for payment of MA nursing facility services for FY 2005-2006 and invited interested persons to comment on the proposed change. The Department received a total of 26 comment letters in response to the notice.

The Department also sought advice on its proposal to cap nursing facility payment rates at the Medical Assistance Advisory Committee (MAAC) on May 26, 2005, and the Long-Term Care Subcommittee of the MAAC on June 8, 2005.

In addition, the Department met with representatives of the four nursing home associations—Pennsylvania Health Care Association (PHCA), Hospital and Healthsystem Association of Pennsylvania (HAP), Pennsylvania Association of Non-Profit Homes for the Aging (PANPHA) and Pennsylvania Association of County Affiliated Homes (PACAH)—on nine separate occasions both before and after publication of the rate cap notice to confer with, solicit and obtain input and recommendations on how the Department might best contain the steady inflation of nursing facility payment rates. The Department also discussed this issue at a PACAH conference on April 20 and 21, 2005, met with the PANPHA financial committee on March 25, 2005, and attended a PANPHA conference on June 15, 2005, to discuss its proposal to cap rate increases.

As the public process took place, the Department continued to consider and make refinements in the methodology to be used to implement the rate cap. On July 12, 2005, the Department shared this revised rate cap model with the four nursing facility associations. On August 9, 2005, the Department met with the associations to hear their concerns and comments regarding the model. As a result of these discussions, the Department made additional changes to the rate cap model.

Through these various efforts, the Department obtained thoughtful, substantive comment and recommendations. The Department considered all of that input in the course of revising the rate cap and developing this final-omitted rulemaking. Particular comments and the Department's responses are as follows.

Comment

Various commentators suggested that, although described as a "cap" on increased rates, what the Department was actually proposing was a reduction in rates.

Response

Under the case-mix rate setting methodology contained in Chapter 1187, an individual nursing facility's rate may increase or decrease from one rate setting year to the next depending on factors such as nursing facility costs, peer group changes, median amounts, and the case-mix index (CMI) levels of its residents. As implemented by this rulemaking, the cap will not alter or eliminate those variables. Rather, nursing facility payment rates for FY 2005-2006 will continue to be established in accordance with that methodology but with the addition of the application of the .95122 adjustment factor. As a result, and because the cap has been refashioned to moderate rate inflation on an average Statewide basis, rather than an individual facility basis, some nursing facilities will experience a reduction in payment rates from FY 2004-2005 while others may see increases in excess of 2.8%. Because, however, the purpose and effect of this rulemaking is to limit the overall amount by which rates as a

whole for FY 2005-2006 will exceed the comparable rates for FY 2004-2005, the change is accurately referred to as a "cap."

Comment

Several commentators objected to the proposed rate cap based upon the understanding that, once implemented, the 2.0% cap would continue in effect for an unspecified number of successive rate years. As a result, the cap would cause nursing facility payment rates to be increasingly disconnected from their audited allowable costs.

Response

By enacting Act 42, the General Assembly instructed the Department to amend or replace the case-mix payment system, and it granted to the Department the authority to promulgate the necessary regulations on an expedited basis. Under that authority, the Department intends to promulgate regulations that amend or replace the case-mix payment system, effective July 1, 2006. Consequently, instead of becoming a permanent feature of the case-mix payment system, the cap will be an interim measure, applicable only to the computation of payment rates for the 2005-2006 rate year. Because the cap only affects the rates for a single year, concerns over its possible significance in subsequent years are rendered moot.

Comment

The most common specific criticism of the proposed rate cap was that, if implemented as proposed, the cap would undermine the existing incentive for nursing facilities to admit higher acuity residents. As previously noted, under the existing case-mix payment system, an individual nursing facility's per diem payment rate is adjusted on a quarterly basis to reflect recent changes in the average acuity level of its MA residents, as measured by the "MA case-mix index" (MA-CMI). In the proposed rate cap notice, the Department proposed to limit each nursing facility's quarterly per diem rate to an amount equal to 2% of the average of the facility's quarterly rates for FY 2004-2005, regardless of any acuity-related fluctuations. The commentators pointed out that the proposed cap would effectively eliminate upward MA-CMI adjustments to rates.

Response

The Department has modified the rate cap to address these comments. Operationally, a cap functions with reference to a base amount. As proposed, the base amount would have been the average of an individual nursing facility's quarterly rates for the 2004-2005 rate year. As modified, the base is the Statewide day-weighted average rate for the 2004-2005 rate year. The Department estimates that, but for the rate cap, the case-mix payment system would generate a Statewide day-weighted average rate for FY 2005-2006 that would be approximately 7.9% higher than the average for the preceding year. Therefore, to limit the overall increase in rates to 2.8%, the sum of each nursing facility's rate components will be multiplied by .95122. Because, under this modification, each nursing facility's "resident care" rate component will continue to reflect changes in average resident acuity, each nursing facility's per diem rate will continue to fluctuate in accordance with corresponding increases and decreases in average resident acuity.

Comment

The Department considered including a provision in this rulemaking that would have enabled the Department to do a reconciliation and apply a further rate adjustment

to fourth quarter per diem rates to ensure that the rate cap actually held payment rate increases in FY 2005-2006 to 2.8% Statewide. The associations were opposed to the fourth quarter adjustment factor and stressed that any methodology chosen by the Department should provide the nursing facilities with predictability regarding their rates for the entire fiscal year.

Response

The Department has not included a fourth quarter adjustment in the amendment. Instead, the Department will apply a single adjustment factor in each of the four quarters of FY 2005-2006.

Comment

"Fairness" was a concern of various commentators. A common criticism was that, as proposed, the 2.0% cap would unfairly burden nursing facilities serving higher acuity residents. One commentator made the general recommendation that, if the Department were compelled to limit the growth of payment rates, the changes to the reimbursement system should be "uniform" and "proportionate." Another commentator suggested that the rate cap should be based upon the number of licensed beds, rather than days of care. In addition, a commentator suggested that the cap should provide special consideration for nursing facilities serving a high proportion of MA and higher acuity residents, and a nursing facility's willingness to admit a significant percentage of "day one MA eligibles."

Response

As previously discussed, the Department has modified the rate cap to eliminate the disincentive to admit higher acuity residents. This modification eliminated the most common basis for assertions that the cap would be unfair. In revising the cap, the Department considered various alternatives. Because payments are based upon days of care, the Department determined that basing the cap solely upon the number of licensed beds would be impracticable. The Department did, however, consider implementing the cap in the form of a dollar-specific adjustment, whereby the sum of a nursing facility's rate components would be reduced by a specific dollar amount to arrive at the final per diem rate. The Department ultimately rejected this alternative because the effects of a dollar-specific adjustment would have been disproportionately borne by lower-rate facilities (\$4.66 is a larger percentage of a \$140 rate than it is of a \$180 rate). The Department concluded that a percentage-based adjustment factor, applied after all the rate components have been computed and summed, was a reasonable, uniform and proportionate approach.

Concerns over the high proportion of MA residents are addressed by the disproportionate share provisions of the case-mix payment system, which are not altered by the cap. Moreover, as previously discussed, the modified cap continues the existing adjustment of rates to reflect changes in acuity. The Department concludes that these mechanisms adequately address the commentators' concerns, and that revising the rate cap to provide "special consideration" for nursing facilities serving a high proportion of MA and high acuity residents would be impracticable.

Comment

Two nursing facilities suggested that the proposed 2.0% rate cap, in conjunction with the nursing facility assessment, would severely impair their ability to adequately care for their residents.

Response

Neither of the nursing facilities provided any details as to the changes they would make that would result in decreased quality of care for their residents. Further, and understandably, their concerns appear to be limited to their particular circumstances: Notwithstanding the concerns expressed by these individual commentators, the Department notes that none of the four nursing facility associations that submitted written comments suggested that the Department's proposed rate cap for the 2005-2006 rate year would cause the quality of care to be compromised; and although over 630 facilities participate in the MA Program, no other facilities expressed any such concern.

Moreover, the commentators' concerns were based upon the Department's initial proposed cap, which would have limited rate increases to 2.0% for multiple rate years. Under this regulation, however, the cap is 40% higher than the cap that was proposed in the public notice and it is being implemented on a Statewide average, rather than individual facility basis.

In any event, however, the obligation of a provider to provide appropriate, high-quality care is a condition of participation in the MA Program; the obligation exists independent of any particular payment rate or any feature of the rate setting methodology. The Department has mechanisms in place for ensuring compliance with these requirements, including inspections, investigations of complaints, and monitoring. In summary, the Department concludes that a 1-year rate cap of 2.8% will not impair the quality of care provided by nursing facilities.

Comment

Several commentators suggested that if the rates for FY 2005-2006 are capped at 2.0% above the rates for the preceding fiscal year, certain nursing facilities might be forced to close, resulting in the need to relocate their residents.

Response

By suggesting that nursing facilities might be forced to close, the commentators implied that a cap on the payment rates for the FY 2005-2006 rate year would create an access problem, whereby the MA Program would have insufficient nursing facility beds available for MA recipients in need of nursing facility services. The Department disagrees that the cap is likely to cause any problems related to access to care.

Currently, there are approximately 630 nursing facilities, with a total of approximately 84,600 licensed beds, participating in the MA Program. Based on the most recent occupancy information available to the Department, the overall occupancy rate for these facilities was approximately 90%. Thus, at any given time the MA Program had approximately 8,460 unoccupied and available beds. Because the MA Program possesses substantial unused capacity, the withdrawal of any particular nursing facility from the program would not present an access problem.

Tellingly, the commentators who raised the possibility of nursing facility closures were primarily nursing facility residents or relatives of residents. The commentators were concerned about the continued survival of particular nursing facilities. By contrast, even though the public notice proposed to implement the cap on a multiple year basis, none of the four nursing facility associations that submitted comments suggested that the cap would force any of their members to close. Likewise, although there

are 630 nursing facilities participating in the MA Program, written comments were submitted on behalf of only ten individual facilities. While these facilities were uniformly opposed to the proposed rate cap, none asserted that they would be forced to close as a result of the proposed 2.0% cap.

From a programmatic standpoint, individual nursing facilities occasionally terminate their participation in the MA Program. Some remain in operation; others close. In the past, such terminations, whether voluntary or involuntary, have not served to create an access problem, even in areas of this Commonwealth where there were perceived shortages of nursing facility beds.

Comment

Various commentators recommended that the Department make no changes to the case-mix payment system, and that the Department find the funds needed to make payment at the rates generated by that system. Other commentators criticized the proposed cap on the grounds that rate increases would not be sufficient to offset increases in nursing facility costs.

Response

In its proposed rate cap notice, the Department stated that since 2000, MA nursing facility payment rates have increased by approximately 5.6% each year, and by 29.4% overall, a rate of growth that cannot be sustained and would result in insufficient funds being available to pay for all days of care projected to be provided during the 2005-2006 rate year. The multiple year 2.0% cap was proposed as a means of containing the resulting rate increases.

While the Department originally estimated that a multiple year cap of 2.0% would be necessary to meet its cost containment objectives, the Department has now determined that for the 2005-2006 rate year, a cap of 2.8% will meet those objectives. For subsequent rate years, the Department expects to make further modifications to the case-mix payment system, or to replace that system in its entirety.

Comment

Various commentators objected to the proposed 2.0% cap on the grounds that it would prevent nursing facilities from receiving full reimbursement, either for the costs they incur during the 2005-2006 rate year, or for the audited allowable costs that are in the Nursing Home Information System (NIS) Database and used to compute the 2005-2006 rates.

Response

The rates generated by the case-mix payment system are payment rates; they do not reimburse nursing facilities for their past or current costs. For example, if an enrolled nursing facility provided services to an MA resident during the 2004-2005 rate year, the payments made by the Department for those services were computed using per diem rates, and those rates are not based upon any costs that the provider incurred during that period. Moreover, while the rates are based (in part) upon costs that the nursing facility incurred in already concluded periods, the payments that the Department made for services provided during the 2004-2005 rate year are compensation for those services; the payments do not reimburse the nursing facility for the costs it incurred in the earlier periods.

Comment

One nursing facility association suggested that a possible effect of the rate cap might be that, if a nursing facility had kept its cost increases substantially lower than the other facilities in its peer group, the cap might result in an actual reduction in its rates when compared to those for the comparable quarter in FY 2004-2005. It was suggested that the rate cap methodology should "assure that all nursing homes experience rate increases effective July 1, 2005, except homes that have seen substantial decreases in facility-specific case-mix indices."

Response

In response to various comments regarding the 2% cap and consistent with its representations to the General Assembly in connection with the recently enacted Appropriations Act, the Department developed a methodology that will increase rates by 2.8% from the Statewide day-weighted average rate for the 2004-2005 rate year. Before deciding on this methodology, numerous discussions were held with and input was sought from the nursing facility associations. In the end, the Department decided to implement a methodology that it determined best addresses all competing concerns, including the Commonwealth's concern that rate inflation is sufficiently and responsibly moderated to help ensure that adequate funds for MA nursing facility services remain available throughout the fiscal year. The methodology is applied uniformly, provides predictability, provides acuity adjustments, and follows the existing case-mix methodology by rebasing and calculating quarterly acuity adjustments. It does not assure, however, that all nursing facilities will experience rate increases.

Comment

Various commentators expressed concern that the proposed 2% cap would disrupt nursing facility budgets. One commentator pointed out that, for county governments, July 1, 2005, is the midpoint of their budget year and if the 2% cap were to become effective on that date, the counties would have to rearrange their budgets. Other commentators asserted that the cap might not allow nursing facilities to provide raises to their employees.

Response

The Department has not published the final rates for any quarter of the 2005-2006 rate year. Therefore, nursing facility budgets encompassing any part of that rate year were necessarily based upon estimates of what those rates would be. To the extent that the actual rates are not the same as the estimates, a nursing facility will have to make adjustments. Such adjustments are a normal part of the budgeting process and are implicit in the initial use of estimates.

Comment

One commentator suggested that, by proposing to make the rate cap effective as of July 1, 2005, the Department was proposing to violate the guidance set forth in a "Dear State Medicaid Director's" letter of December 10, 1997, in which the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services (CMS)) provided guidance regarding compliance with the public process requirements of 42 U.S.C.A. § 1396a(a)(13)(A).

Response

The Department's actions are consistent with the guidance found in the "Dear State Medicaid Director" letter. According to that letter, the replacement of the Boren amendment with the current provisions of 42 U.S.C.A.

§ 1396a(a)(13)(A) was intended to provide states with "maximum possible flexibility . . . involving payment rate changes." The letter provides examples of the various processes that CMS considers acceptable. Among other things, the letter suggests that a state could comply with the Federal public process requirement by publishing a notice announcing its intent to change its payment methodology, describing the state's proposed rates, methodologies and justifications and allowing the public a reasonable opportunity for comment. Since the enactment of the Federal public process requirement in 1997, the Department has used the public notice option as a means of complying and CMS has never expressed concern that this practice is inconsistent with its guidance.

In this instance, and as previously described in detail, the Department not only gave reasonable and proper notice of the proposed rate cap and invited public comment, it sought the advice of the MAAC and the Long-Term Care Subcommittee of the MAAC and undertook various other measures to solicit input from affected stakeholders.

Comment

Commentators asserted that implementation of the proposed cap would violate various state laws governing the rulemaking process.

Response

As noted, this rulemaking is promulgated under the expedited rulemaking authority granted to the Department under section 454 of the code. Section 454 specifies that, until December 31, 2005, the Department must promulgate provider payment rate regulations under section 204(1)(iv) of the CDL (45 P.S. § 1204(1)(iv)), which permits an agency to omit or modify proposed rulemaking when the regulation pertains to Commonwealth grants or benefits. In addition, section 454 of the code expressly exempts these provider payment rate regulations from review under the Regulatory Review Act, and from review by the Attorney General under section 205 of the CDL (45 P.S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)). The amendments adopted by this rulemaking are promulgated in accordance with this authority.

Comment

Various commentators asserted that the Department lacks the authority to promulgate regulations that are effective as of July 1, 2005, rather than on the day they are published in the *Pennsylvania Bulletin*. While these assertions generally did not address any particular authorities, one commentator did assert that the nursing facility providers currently enrolled in the MA Program have a "vested right to payment" under the current—that is, unamended—case-mix payment system.

Response

It is "axiomatic" that an administrative agency may adopt retroactive regulations. *Hospital Association of Pennsylvania v. Foster*, 616 A.2d 1082 (Pa.Cmwlth. 1992). Indeed, the courts have repeatedly upheld the Department's authority to make retroactive changes to its reimbursement regulations. *Wesbury United Methodist Community v. Department of Public Welfare*, 597 A.2d 271 (Pa.Cmwlth. 1992); *Carbon County Home v. Department of Public Welfare*, 535 A.2d 1243 (Pa. Cmwlth. 1988). In this instance, any question regarding the authority to make the amendments to § 1187.96 retroactively effective to July 1, 2005, is resolved by sections 443.1(5) and 454 of the code which, by their plain language, specifically

permit the Department to revise the case-mix payment system for the entire FY 2005-2006 .

The Department disagrees with the contention that the existing nursing facilities have a vested right to have their rates computed in accordance with the unamended version of § 1187.96. Those rates have not yet been set and, until final rates are set, an MA provider has no vested property right in any particular rate. See, such as, *Monroe County v. Axelrod*, 163 A.D.2d 847, 558 N.Y.S.2d 377 (1990). In addition, the "vested rights" argument ignores the fact that the Department provided advance public notice that it intended to amend the case-mix payment system to include the cap, and that it proposed to make that cap effective as of July 1, 2005. Under these circumstances, imposition of the cap does not and could not impair any vested rights.

Comment

A commentator suggested that the Department eliminate the Utilization Management Review (UMR) unit, or that it redirect the activities of the UMR unit toward the Pennsylvania Department of Aging (PDA) Waiver program to ensure that individuals who are receiving PDA Waiver services are truly eligible for Waiver services.

Response

The Department is required by Federal regulations to maintain a program to safeguard against unnecessary utilization of care and services. See 42 CFR Part 456 (relating to utilization control). The Department's UMR unit was created to fulfill this function in the long term care area. Therefore, the Department cannot eliminate it. Moreover, the Department sees no reason to redirect the Unit's activities away from the functions they currently perform.

Comment

Some commentators made the general suggestion that the Department work with the nursing facility associations toward the objective of creating a revised or new reimbursement methodology for nursing facility services.

Response

Act 42 charged the Department with the responsibility to reform or replace the case-mix payment system. The Department will be meeting with the nursing facility associations in working toward that end in the coming months.

Comment

The proposed rate cap would have limited each nursing facility's quarterly rates for FY 2005-2006 to no more than 2.0% of the corresponding quarterly rates for 2004-2005. Several commentators suggested that, because of this correlation, facilities should not be prevented from litigating the accuracy of their FY 2004-2005 rates, even if they had not filed appeals contesting those rates, or had filed appeals but subsequently withdrew them.

Response

These comments are rendered moot by the revisions to the rate cap. As revised, the cap is imposed only after the rate components for FY 2005-2006 year have been otherwise computed and summed. If, when the Department sets a quarterly per diem payment rate for a nursing facility, the facility concludes in good faith that the Department has made an error in computing that rate, the facility may contest its rate by filing an appeal with the Bureau of Hearings and Appeals and, among other things, may raise the issue whether the Department correctly applied the amended regulations.

Sunset Date

This regulation applies to the methodology used to compute nursing facility case-mix per diem rates for the 2005-2006 rate year only.

Regulatory Review

Under sections 443.1(5)(ii) and 454 of the code, this final-omitted rulemaking is not subject to review under the Regulatory Review Act.

Findings

The Department finds that:

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

(2) That the adoption of this regulation in the manner provided by this order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

Order

The Department acting under sections 201(2), 206(2), 403(b), 443.1(5) and 454 of the code orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 1187, are amended by amending § 1187.96 to read as set forth in Annex A of this order, with ellipses referring to the existing text of the regulation.

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

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

(d) This order shall take effect July 1, 2005.

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-501. (1) General Fund; (2) Implementing Year 2005-06 is \$15.413 million; (3) 1st Succeeding Year 2006-07 is \$16.815 million; 2nd Succeeding Year 2007-08 is \$16.815 million; 3rd Succeeding Year 2008-09 is \$16.815 million; 4th Succeeding Year 2009-10 is \$16.815 million; 5th Succeeding Year 2010-11 is \$16.815 million; (4) 2004-05 Program—\$983.936 million; 2003-04 Program—\$836.317 million; 2002-03 Program—\$777.084 million; (7) MA Long-Term Care; (8) recommends adoption. Funds have been included in the Department's budget to cover this increase.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter G. RATE SETTING

§ 1187.96. Price and rate setting computations.

* * * * *

(e) The following applies to the computation of a nursing facilities per diem rates:

(1) The nursing facility per diem rate will be computed by adding the resident care rate, the other resident related rate, the administrative rate and the capital rate for the nursing facility.

(2) For each quarter of the rate setting year that begins on July 1, 2005, and ends on June 30, 2006, the nursing facility per diem rate will be computed as follows:

(i) *Generally.* If a nursing facility is not a new nursing facility or a nursing facility experiencing a change of ownership during the 2005-2006 rate year, that nursing facility's resident care rate, other resident related rate, administrative rate and capital rate will be computed in accordance with subsections (a)—(d) and the nursing facility's per diem rate will be the sum of those rates multiplied by an adjustment factor of .95122.

(ii) *New nursing facilities.* If a nursing facility is a new nursing facility for purposes of § 1187.97(1) (relating to rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities, and former prospective payment nursing facilities) that nursing facility's resident care rate, other resident related rate, administrative rate and capital rate will be computed in accordance with § 1187.97(1), and the nursing facility's per diem rate will be the sum of those rates multiplied by an adjustment factor of .95122.

(iii) *Nursing facilities with a change of ownership and reorganized nursing facilities.* If a nursing facility undergoes a change of ownership during the 2005-2006 rate year, that nursing facility's resident care rate, other resident related rate, administrative rate and capital rate will be computed in accordance with § 1187.97(2), and the nursing facility's per diem rate will be the sum of those rates multiplied by an adjustment factor of .95122.

[Pa.B. Doc. No. 05-2080. Filed for public inspection November 11, 2005, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Corrective Amendment to 58 Pa. Code § 65.6

The Fish and Boat Commission (Commission) has discovered a discrepancy between the agency text of 58 Pa. Code § 65.6 (relating to delayed harvest artificial lures only areas), as deposited with the Legislative Reference Bureau, and the official text published at 35 Pa.B. 5261, 5263 (September 24, 2005) and scheduled to be codified in the December 2005 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 373). The amendment of § 65.6 inadvertently omitted the text of existing paragraph (4).

Therefore, under 45 Pa.C.S. § 901: The Fish and Boat Commission has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code § 65.6. The corrective amendment to 58 Pa. Code § 65.6 is effective as of January 1, 2006, the effective date for the amendment of § 65.6 as ordered by the Commission.

The correct version of 58 Pa. Code § 65.6 appears in Annex A.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Annex A

TITLE 58 RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§65.6. Delayed harvest artificial lures only areas.

(a) The Executive Director, with the approval of the Commission, may designate waters as delayed harvest, artificial lures only areas. The designation of waters as delayed harvest, artificial lures only areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted delayed harvest, artificial lures only areas except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only constructed of metal, plastic, rubber or wood or with flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear.

(2) The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

(3) Fishing hours are 1 hour before sunrise to 1 hour after sunset during the regular and any extended trout season.

(4) Minimum size is: 9 inches, caught on, or in possession on, the waters under regulation.

(5) The daily creel limit is: three combined species except during the period after Labor Day and before June 15 when the daily limit shall be zero trout combined species, caught on or in possession on the waters under regulation.

(6) Taking of baitfish or fishbait is prohibited.

(7) A current trout/salmon permit is required.

[Pa.B. Doc. No. 05-2081. Filed for public inspection November 11, 2005, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 4, 2005, meeting, adopted amendments to § 143.84 (relating to application) to replace the language establishing the deadline by which muzzleloader licenses must be purchased with language more consistent with the application process for other various licenses.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 35 Pa.B. 3550 (June 25, 2005).

1. Purpose and Authority

Formerly, § 143.84 required all muzzleloader license applications to be made by the second Saturday in

November. The Commission has determined that this deadline is no longer necessary. Therefore, the Commission has amended § 143.84 by replacing the language establishing the application deadline with language more consistent with the application process for other various licenses. This amendment renders the subsequent language allowing collectors to purchase a flintlock (muzzleloader) license after the close of the special flintlock season to be unnecessary; therefore this language was also eliminated.

Section 2722(g) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of license issuing activities. Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth . . ." The amendment to § 143.84 was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 143.84 by replacing the language establishing the deadline by which muzzleloader licenses must be purchased with language more consistent with the application process for other various licenses. The final-form rulemaking also removes language made unnecessary by the previously discussed change.

3. Persons Affected

Persons wishing to apply for and purchase muzzleloader licenses will be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.84 to read as set forth at 35 Pa.B. 3550.

(b) The Executive Director of the Commission shall certify this order and 35 Pa.B. 3550 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-207 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-2082. Filed for public inspection November 11, 2005, 9:00 a.m.]

GAME COMMISSION [58 PA. CODE CH. 147] Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 4, 2005, meeting, adopted an amendment to § 147.122 (relating to application) to increase the examination fee for the taxidermy permit.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 35 Pa.B. 3550 (June 25, 2005).

1. Purpose and Authority

The cost of providing the taxidermy examination to applicants currently exceeds the revenue generated by the existing fee charged to take the examination. The Commission amended § 147.122 to allow the Commission to recover its expenses by increasing the taxidermy examination fee from \$50 to \$300.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 147.122 was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 147.122 by increasing the taxidermy examination fee from \$50 to \$300.

3. *Persons Affected*

Persons wishing to apply for a taxidermy permit from the Commission will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork for the Commission.

6. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.122 to read as set forth at 35 Pa.B. 3550.

(b) The Executive Director of the Commission shall certify this order and 35 Pa.B. 3550 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-209 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-2083. Filed for public inspection November 11, 2005, 9:00 a.m.]