PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Request for Comments on Revisions to the Net Metering and Interconnection Regulations at 52 Pa. Code Chapter 75 to Conform with the Language of Act 35 of 2007; Doc. Nos. M-00051865, L-00050174 and L-00050175

On July 17, 2007, Governor Edward Rendell signed Act 35 of 2007 (Act 35) into law.[1] This Act 35 amended several sections of the Alternative Energy Portfolio Standards Act (AEPS) (73 P. S. §§ 1648.1—1648.8), including those relating to the definition of customer generators, the reconciliation mechanism for surplus energy supplied through net metering and the price to be paid for such surplus energy. Specifically, these changes included the following:

- Revising the definition of "customer generator" to increase the capacity limit on nonresidential projects from 1 to 3 megawatts generally, and from 2 to 5 megawatts for those projects that operate in parallel with the grid;
- Revising the definition of "net metering" to include a restriction on virtual meter aggregation; and
- Revising 73 P. S.§ 1648.5 to require that customer-generators be compensated for excess generation on an annual basis at the "full retail value for all energy produced," as opposed to the current monthly basis at the avoided wholesale cost rate.

The Commission previously promulgated regulations relating to net metering and interconnection at 52 Pa. Code Chapter 75 (relating to alternative energy portfolio standards), that became effective upon publication 36 Pa.B. 7562 (December 16, 2006). The enactment of Act 35 of 2007 requires corresponding changes to the following definitions contained in 52 Pa. Code § 75.1: "Act," "Alternative energy credit," "Customer-generator," "Force majeure" and "Tier I alternative energy source." Changes also are required for the definitions of "Net metering" and "Virtua" "metering aggregation" contained in 52 Pa. Code § 75.12 (relating to definitions). Also, Act 35's amendment of section 5 of the AEPS, 71 P. S. § 1648.5, will require changes to 52 Pa. Code §§ 75.13(d) and (f) (relating to general provisions) and 75.12.

While a majority of the previously—referenced changes to the Commission's regulations merely involve replacing existing language with language contained in Act 35, some of these changes raise new issues that had not been previously considered. Specifically, several issues are raised by Act 35's requirement that "excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis." Some of the new issues raised that may require comment are as follows:

- What is the meaning of "full retail value for all energy produced"? Act 35 does not specifically define this term. The term could be interpreted as meaning the fully bundled retail rate for generation, transmission, distribution, and any applicable transition charges. Alternatively, given the Legislature's use of the terms "excess generation" and "energy" it also could be interpreted as being limited to the generation component of the retail rate.
- What are the projected costs associated with these competing interpretations, that is, given a projected level of net metered generation (kwh), what are the projected costs to the remaining customers of an EDC if net-metered customer-generators receive × cents per kwh versus y cents per kwh?
- How should any residual stranded cost charges be treated in the annual reconciliation?
- Are there any additional issues to be addressed by moving the reconciliation of excess energy from a monthly to an annual basis?
- Act 35 does not define the phrase "annual basis." Does this phrase mean a calendar year, fiscal year or does it correspond with the AEPS compliance period of June 1 through May 31?
- Should demand charges for distribution, transmission and generation services paid by net metered customers be adjusted? If so, should each component of the demand charge be adjusted to reflect the net flow of energy through a net meter? How should the adjustments be calculated?
- Should the Commission provide monthly credits for net metered accounts, and carry over monthly excess generation to the next billing month, with any remaining excess energy (where total annual generation of energy exceeds total annual usage) cashed out at the end of the year? Alternatively, do the metering regulations only provide for annual compensation for excess generation in any month?

By Secretarial Letter dated July 26, 2007, the Commission notified interested parties that the Commission will promptly begin the process of revising its net metering and interconnection regulations at 52 Pa. Code Chapter 75, to reflect the requirements of Act 35 of 2007. In the Secretarial Letter, the Commission indicated that, because Act 35 became effective immediately, its provisions must be given immediate effect while the rules are being revised. The Commission also concluded that all electric distribution companies must apply the new compensation standard for net metering customers beginning with the first full billing period after July 17, 2007, the effective date of Act 35.

Due to the fact that Act 35 became effective on July 17, 2007, that some EDCs have AEPS compliance requirements that must be met as of May 31, 2008, and that a majority of the required changes merely involve language changes to make the regulations consistent with Act 35, the Commission seeks to expedite the process for revising the existing net metering and interconnection regulations. The Commission seeks comments on how the Act 35 amendments to AEPS should be reflected in the Commission's regulations at 52 Pa. Code Chapter 75.[2]

An original and 15 copies of any written comments referencing the docket numbers previously shall be submitted to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105.

[1] Act 35 is available through a link at the Commission's AEPS web page at http://www.puc.state.pa.us/electric/electric_alt_energy.aspx.

[2] Note that the comments requested in this secretarial letter are separate and apart from the comments requested in the September 13, 2007 secretarial letter regarding the rulemaking at Docket No. L-00060180. While both letters request comments regarding the effect the 2007 amendment to AEPS has on Commission regulations, the September 13th letter sought comments related to the proposed regulations published in the 36 Pa.B. 6289 (October 14, 2006). This letter seeks comments related to the Commission's existing regulations in Chapter 75 of Title 52.

Comments shall be submitted within 30 days of the publication of this Secretarial Letter in the *Pennsylvania Bulletin*. Reply comments may be filed 20 days thereafter.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 07-1898. Filed for public inspection October 19, 2007, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

Prescriptive Privileges for Physician Assistants

The State Board of Osteopathic Medicine (Board) proposes to adopt §§ 25.177 and 25.178 (relating to prescribing and dispensing drugs, pharmaceutical aids and devices; and medical records), to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

Section 10(h) and (p) of the Osteopathic Medical Practice Act (act) (63 P. S. § 271.10(h) and (p)) authorizes the Board to promulgate this rulemaking. Section 10(h) of the act provides the Board the general authority to "establish such rules and regulations, relating to physician assistants, as it deems necessary to protect the public and to implement the provisions of [the] act." Section 10(p) of the act requires the Board to work with the State Board of Pharmacy to "jointly develop regulations to permit a physician assistant to prescribe and dispense drugs at the direction of a licensed physician." This proposed rulemaking was jointly developed and approved by the Board and the State Board of Pharmacy at regularly scheduled public meetings.

C. *Background and Purpose*

Currently, physician assistants are permitted to prescribe and dispense drugs under the direction of a physician licensed by the Board in accordance with 49 Pa. Code § 18.158 (relating to prescribing and dispensing drugs, pharmaceutical aids and devices). At this time, however, physician assistants practicing under the direction of a physician licensed by the Board do not have prescriptive privileges. This situation has caused a great deal of confusion in health care settings. This proposed rulemaking is intended to resolve this confusion by permitting physician assistants who are practicing under the direction of an osteopathic physician to prescribe drugs in a manner similar to the practice of physician assistants under the direction of allopathic physicians.

D. *Description of Proposed Regulations*

Proposed § 25.177(a) would permit a supervising physician to delegate to the physician assistant the prescribing, dispensing and administering of drugs and therapeutic devices. Paragraph (2) would prohibit physician assistants from prescribing or dispensing Schedule I controlled substances. Paragraph (3) would allow them to prescribe or dispense Schedule II controlled drugs for initial therapy up to a 72-hour dose and requires that the physician assistant notify the supervising physician within 24 hours from the issuance of the prescription. It would also allow a physician assistant to write a prescription for a Schedule II controlled substance for up to a 30-day supply if the patient was examined at the time of renewal and the patient's ongoing therapy was reviewed and approved by the supervising physician prior to the writing of the renewal. The prescription would have to clearly state on its face that it is for initial or ongoing therapy.

There are many physician and physician assistant specialties that deal with chronic pain management. In specialties such as oncology, surgery or anesthesiology, and in the family practice setting, physician assistants are an integral part of patient care. Managing the patients' pain in those settings often requires the ability to write prescriptions for Schedule II narcotics on both a short- and long-term basis. At times, patients may require ongoing therapy or need to renew prescriptions when the physician is not immediately available but the physician assistant is available. Also, there are many physician assistants that work in settings such as emergency rooms, walk-in clinics and industrial clinics. The inability to write a prescription for a Schedule II narcotic impedes the care of the patient in these settings. Allowing for a 72-hour supply of medicine until a physician sees that patient enhances the care rendered by the physician assistant.

Section 25.177(a)(4) would permit a physician assistant to prescribe or dispense only if the patient is under the care of the supervising physician and only in accordance with the supervising physician's instructions and written agreement. Section 25.177(a)(5) would permit a physician assistant to request, receive and sign for professional samples and distribute professional samples to patients. Section 25.177(a)(6) would require a physician assistant authorized to prescribe or dispense controlled substances to register with the Drug Enforcement Administration.

Section 25.177(b) would set forth provisions pertaining to prescription blanks and would prohibit a supervising physician from presigning prescription blanks. Section 25.177(c) would require the supervising physician to immediately advise the patient, notify the physician assistant and, in the case of a written or oral prescription, advise the pharmacy, if the physician assistant is prescribing or dispensing a drug inappropriately. In addition, the order to discontinue use of the drug or prescription would be required to be noted in the patient's medical record by the supervising physician.

Section 25.177(d) would set forth the requirements for recordkeeping relating to prescriptions written by physician assistants. In particular, a physician assistant would be required to keep a copy of the prescription and number of refills in a file; and the physician assistant would be required to record the physician assistant's name, name of the medication, amount and dose of medication dispensed and date of medication dispensed in the patient's medical records. The physician assistant would be required to report, orally or in writing, to the supervising physician within 36 hours, a drug prescribed or medication dispensed by the physician assistant while the supervising physician was not physically present, and the basis for each decision to prescribe or dispense in accordance with the written agreement. Paragraph (4) would require that the supervising physician countersign the

patient record at least weekly. Paragraph (5) would require that a physician assistant comply with these regulations and Department of Health regulations relating to prescribing, administering, dispensing, packaging and labeling of drugs.

Section 25.178 would require that the supervising physician timely review, at least weekly, the medical records prepared by the physician assistant to ensure that the existing requirements pertaining to medical records have been satisfied.

E. *Input form the Regulated Community*

The Board solicited input from the Pennsylvania Society of Physician Assistants and the Pennsylvania Osteopathic Medical Association. In addition, as required by section 10(p) of the Osteopathic Medical Practice Act, the proposed rulemaking was reviewed and approved by the State Board of Pharmacy.

F. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions and would impose no additional paperwork requirements on the Commonwealth or the public sector.

G. *Sunset Date*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 10, 2007, 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 must 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 Boards, the General Assembly and the Governor of comments, recommendations or objections raised.

I. *Public Comment*

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

CHARLES P. FASANO, D. O.,
Chairperson

Fiscal Note: 16A-5318. 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 C. PHYSICIAN ASSISTANT PROVISIONS

PHYSICIAN ASSISTANT UTILIZATION

§ 25.177. Prescribing and dispensing drugs, pharmaceutical aids and devices.

(a) *Prescribing, dispensing and administration of drugs.*

(1) The supervising physician may delegate to the physician assistant the prescribing, dispensing and administering of drugs and therapeutic devices.

(2) A physician assistant may not prescribe or dispense Schedule I controlled substances as defined by section 4 of The Controlled Substances, Drug, Device and Cosmetic Act (35 P. S. § 780-104).

(3) A physician assistant may prescribe a Schedule II controlled substance for initial therapy, up to a 72-hour dose. The physician assistant shall notify the supervising physician of the prescription as soon as possible, but in no event longer than 24 hours from the issuance of the prescription. A physician assistant may write a prescription for a Schedule II controlled substance for up to a 30-day supply if the patient was examined at the time of renewal and the patient's ongoing therapy was reviewed and approved by the supervising physician prior to the writing of the renewal. The prescription must clearly state on its face that it is for initial or ongoing therapy.

(4) A physician assistant may only prescribe or dispense a drug for a patient who is under the care of the physician responsible for the supervision of the physician assistant and only in accordance with the supervising physician's instructions and written agreement.

(5) A physician assistant may request, receive and sign for professional samples and may distribute professional samples to patients.

(6) A physician assistant authorized to prescribe or dispense, or both, controlled substances shall register with the Drug Enforcement Administration (DEA).

(b) *Prescription blanks.* The requirements for prescription blanks are as follows:

(1) Prescription blanks must bear the license number of the physician assistant and the name of the physician assistant in printed format at the heading of the blank. The supervising physician's name and license number must also be printed or preprinted on the prescription.

(2) The signature of a physician assistant must be followed by the initials "PA-C" or similar designation to identify the signer as a physician assistant. When appropriate, the physician assistant's DEA registration number must appear on the prescription.

(3) The supervising physician is prohibited from presigning prescription blanks.

(4) The physician assistant may use a prescription blank generated by a hospital provided the information in paragraph (1) appears on the blank.

(c) *Inappropriate prescription*. The supervising physician shall immediately advise the patient, notify the physician assistant and, in the case of a written or oral prescription, advise the pharmacy if the physician assistant is prescribing or dispensing a drug inappropriately. The supervising physician shall advise the patient and notify the physician assistant to discontinue using the drug and, in the case of a written or oral prescription, notify the pharmacy to discontinue the prescription. The order to discontinue use of the drug or prescription shall be noted in the patient's medical record by the supervision physician.

(d) *Recordkeeping requirements*. Recordkeeping requirements are as follows:

(1) When prescribing a drug, the physician assistant shall keep a copy of the prescription, including the number of refills, in a ready reference file, or record the name, amount, directions for use and doses of the drug prescribed, the number of refills, the date of the prescription and the physician assistant's name in the patient's medical records.

(2) When dispensing a drug, the physician assistant shall record the physician assistant's name, the name of the medication dispensed, the amount of medication dispensed, the dose of the medication dispensed and the date dispensed in the patient's medical records.

(3) The physician assistant shall report, orally or in writing, to the supervising physician within 36 hours, a drug prescribed or medication dispensed by the physician assistant while the supervising physician was not physically present, and the basis for each decision to prescribe or dispense in accordance with the written agreement.

(4) The supervising physician shall countersign the patient record at least weekly in accordance with § 25.178 (relating to medical records).

(5) The physician assistant and the supervising physician shall provide immediate access to the written agreement to anyone seeking to confirm the physician assistant's authority to prescribe or dispense a drug. The written agreement must list the categories of drugs which the physician assistant is not permitted to prescribe.

(e) *Compliance with regulations relating to prescribing, administering, dispensing, packaging and labeling of drugs*. A physician assistant shall comply with this section and with the regulations of the Department of Health in 28 Pa. Code §§ 25.51—25.58 and 25.91—25.95 (relating to prescriptions; and labeling of drugs, devices and cosmetics).

§ 25.178. Medical records.

The supervising physician shall timely review, at least weekly, the medical records prepared by the physician assistant to ensure that the requirements of § 25.213 (relating to medical records) have been satisfied.

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