

PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 1001]

Pennsylvania Gaming Cash Flow Management

The Department of Revenue (Department) is proposing regulations to facilitate its responsibilities under the Pennsylvania Race Horse Development and Gaming Act (act) (4 Pa.C.S. §§ 1101—1904), as assisted by the Department's temporary regulations adopted at 36 Pa.B. 3450 (July 1, 2006) and the correction published at 36 Pa.B. 3789 (July 15, 2006). Under section 1501(c) of the act (relating to responsibility and authority of department), the Department proposes that the temporary regulations in Chapter 1001 (relating to Pennsylvania gaming cash flow management) become permanent regulations to read as set forth in Annex A.

The act went into effect July 5, 2004, requiring that the temporary regulations be adopted within 2 years (July 5, 2006). The temporary regulations expire no later than 3 years following the effective date of the act (July 5, 2007) or upon promulgation of regulations as generally provided by law. On November 1, 2006, the act was amended by the act of November 1, 2006 (P. L. 1243, No. 135) (Act 135).

Purpose of Proposed Rulemaking

The act legalizes the operation of slot machines at a number of venues across this Commonwealth. The Pennsylvania Gaming Control Board (Board) will have primary responsibility for regulatory oversight of gaming activity in this Commonwealth and is separately promulgating regulations in 58 Pa. Code (relating to recreation).

The act required that the Department adopt temporary regulations by July 5, 2006, to facilitate prompt implementation of its responsibilities as defined by the act. The Department is proposing these regulations as a prelude to its adoption of the final-form regulations by July 5, 2007.

Explanation of Regulatory Requirements

The Department has several important responsibilities in connection with the implementation and control of slots gaming. The creation of Chapter 1001 during the temporary regulations process addressed these responsibilities and will be made permanent in this proposed rulemaking regarding cash flow management for accurate accounting and collection of the different earmarked revenues due the Commonwealth from slot machine gaming operations.

Changes to the temporary regulations are as follows.

Section 1001.5(a) (relating to administration and distribution of moneys held by licensed gaming entities and the Commonwealth) is amended to delete the word "Treasury" in accordance with Act 135. Subsection (b) is amended to delete subparagraph (iii) regarding delegation of payment authority and the subparagraphs are renumbered accordingly. Act 135 eliminated the need for the "delegation of authority" provision. In addition, subsection (b)(2) is amended to delete the phrase "for each banking day." Subsection (b)(5)(iii) is amended to delete the word "banking" from the phrase "banking days." Amendments to subsection (b)(2) and (5) are being made for ease of administration in performing statutory obligations.

Section 1001.6(e) (relating to administration of amounts deposited by licensed gaming entities with Treasury to pay Commonwealth gaming related costs and expenses (\$5 million)) is amended by deleting language and adding language addressing periodic assessments, appropriations by the General Assembly and itemized budget requirements. These amendments are in accordance with Act 135.

Section 1001.8(c)(2) (relating to State Gaming Fund transfers) is amended to change the month for publication of the annual inflation adjustment from July 1 to January 1. Subsection (d) is amended to remove the word "daily." In addition, subsection (d)(2) and (3) is amended to remove the words "each banking day." Amendments to this section are being made for ease of administration in performing statutory obligations.

Section 1001.10(d) (relating to Pennsylvania Race Horse Development Fund transfers) is amended with new clarification language for a Category 1 licensee "conducting live racing" and "eligible" Category 1 licensee.

Section 1001.11 (relating to Property Tax Relief Fund transfers) is amended to add clarification language of "and other applicable laws."

Affected Parties

Licensed entities, manufacturers and suppliers of gaming supplies in this Commonwealth, as well as the manufacturer of the Central Control Computer System, will be affected by the proposed rulemaking.

Fiscal Impact

The Department has determined that the overall implementation expenses will be minimal for implementing the act and the regulations.

Paperwork

The proposed rulemaking will require minimal paperwork for the public or the Commonwealth.

The Department will publish a notice in the *Pennsylvania Bulletin* by January 1 annually to announce the annual inflation adjustment of the distributions to municipalities.

Effective Date

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

Sunset Date

The regulations are scheduled for review within 5 years of final-form publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 1061, Harrisburg, PA 17128-1061, within 30 days after the date of the publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 21, 2007, the Department 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 Chairper-

sons of the House Committee on Finance and the Senate Committee on Finance. 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 which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

GREGORY C. FAJT,
Secretary

Fiscal Note: 15-436. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART IX. PENNSYLVANIA GAMING CASH FLOW MANAGEMENT

CHAPTER 1001. PENNSYLVANIA GAMING CASH FLOW MANAGEMENT

GENERAL PROVISIONS

(*Editor's Note:* The Department is proposing to make permanent the temporary regulations published at 36 Pa.B. 3450 and the correction published at 36 Pa.B. 3789 with amendments as required by Act 135. The bracketing and bolding of the following text refers to the temporary regulations which appear in 61 Pa. Code pages 1001-1—1001-9, serial pages (320475) to (320483). The remaining text is printed in regular type to enhance readability.)

§ 1001.1. Scope.

This chapter establishes procedures for the administration and distribution of all net slot machine revenue under the act. In addition, this chapter clarifies the administrative procedures for transferring the statutorily established amounts of funding as prescribed in the act.

§ 1001.2. Purpose.

The purpose of this chapter is to notify prospective licensed entities, as well as the general public, of the procedures and requirements for distributing net slot machine revenue.

§ 1001.3. Definitions.

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

Act—The Pennsylvania Race Horse Development and Gaming Act of 2004 (Act 71) (4 Pa.C.S. §§ 1101—1904).

Annual minimum distribution—Other than for a Category 3 licensee, 2% of the gross terminal revenue of the licensed gaming entity or \$10 million, whichever is greater.

Banking day—The part of any day that the Federal Reserve has established for a bank to be opened to the public for carrying on substantially all of its banking functions.

Board—The Pennsylvania Gaming Control Board of the Commonwealth.

CCS—The central control computer system controlled by the Department and accessible by the Board, to which all slot machines communicate for the purpose of record-

ing, reviewing, reporting and auditing real-time information regarding the events that occur during the operation of a slot machine. This includes distinguishing between daily deposits made by licensed gaming entities of taxes due on play of slot machines and all other transfers of moneys to Commonwealth accounts not considered a daily deposit under this chapter.

Collection Account—A Department bank account authorized by the Treasury for the collection of taxes and other payments received from licensed gaming entities and which is maintained and reconciled by the Department.

Concentration Account—A Treasury bank account used for the deposit and disbursement of all recognized Commonwealth moneys and which is maintained and reconciled by the Treasury Department.

Credit against tax—Credit established if the tax rate imposed by section 1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution) upon slot machine daily gross terminal revenue is increased at any time during the term of 10 years following the initial issuance of the slot machine license.

Department—The Department of Revenue of the Commonwealth.

EFT—Electronic funds transfer.

Fund—A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances and the changes therein, that are segregated for the purpose of carrying on specific activities or attaining certain objectives established for the receipt of gross terminal revenue distributions under the act.

Gross terminal revenue—As defined in section 1103 of the act (relating to definitions).

Licensed gaming entity—As defined in section 1103 of the act.

Manufacturers—As defined in section 1103 of the act.

Pennsylvania Gaming Economic Development and Tourism Fund—The fund established under section 1407 of the act (relating to Pennsylvania Gaming Economic Development and Tourism Fund).

Pennsylvania Race Horse Development Fund—The fund established under section 1405 of the act (relating to Pennsylvania Race Horse Development Fund).

Property Tax Relief Fund—The fund established under section 1409 of the act (relating to Property Tax Relief Fund).

Race Horse Improvement Daily Assessment—The amount each operating licensed gaming entity shall pay daily to the Department, according to Department calculations.

State Gaming Fund—The fund established under section 1403 of the act.

Suppliers—As defined in section 1103 of the act.

Treasury—The Treasury Department of the Commonwealth.

§ 1001.4. Calculations of credit against tax and Race Horse Improvement Daily Assessment.

(a) *Credit against tax.* The amount of the credit must be equal to the difference between the tax calculated at the rate in effect when a license was issued to the

licensed gaming entity and the tax calculated at the increased rate. The credit shall be applied on a dollar-for-dollar basis but may not extend beyond the 10-year period following the initial issuance of the license.

(b) *Race Horse Improvement Daily Assessment.* The amount of this assessment shall be calculated in accordance with section 1405(b) of the act (relating to Pennsylvania Race Horse Development Fund). This assessment shall be multiplied by 18% of daily gross terminal revenue for all active and operating Category 1 licensed gaming entities that are conducting live racing. The amount may not exceed 12% of that day's gross terminal revenue for that licensed gaming entity, and shall be subject to the daily assessment cap established under section 1405(c) of the act.

§ 1001.5. Administration and distribution of moneys held by licensed gaming entities and the Commonwealth.

(a) *Application of section.* This section applies to all transfers of moneys to and from the State Gaming Fund, Pennsylvania Gaming Economic Development and Tourism Fund, Pennsylvania Race Horse Development Fund [, Treasury] and any other fund as specified in this chapter.

(b) *Deposits and transfers to Treasury by licensed gaming entities.*

(1) The Department will notify each licensed gaming entity, Treasury and Office of the Budget of the actual amount each licensed gaming entity shall be required to deposit with Treasury as calculated by the CCS. A licensed gaming entity shall make deposits with Treasury on the same banking day as the date of the Department's notice to the licensed gaming entity and by the times specified by the Department.

(2) Payments shall be electronically transferred by the licensed gaming entities and available to the Commonwealth by the deadline established by the Department [for each banking day]. Moneys shall be deposited in the Department's Collection Account.

(3) System problems or failures, such as power outages and states of emergency, will not excuse the licensed gaming entity from making the required deposits in a timely manner. The licensed gaming entity shall immediately notify the Department and the Board of any of these problems.

(4) The Department will maintain records of deposits to the Department's Collection Account under this chapter and will share information, as practicable, to assist Treasury in its reconciliation of deposits into its Concentration Account.

(5) The administration of assessments will be as follows:

(i) *Proration of assessment.* Upon imposition of the annual minimum distribution amount, as specified in section 1403(c)(3) of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution), regardless of whether the minimum is subject to the budgetary limitations of section 1403 of the act, the required minimum shall be prorated for that portion of the municipality's fiscal year that the Board determines that the licensed gaming entity was actually in operation.

(ii) *Limitation of assessment.* Upon imposition of the minimum distribution upon the licensed gaming entity, the required minimum shall be paid in accordance with the administrative procedures of this section.

(iii) [*Delegation of payment authority.* At the direction of the Board, the licensed gaming entity shall authorize the Department to remit payments previously collected from the licensed gaming entity, on behalf of the licensed gaming entity, under section 1403(c)(3) of the act, when the licensed gaming entity is charged with remitting payments to municipalities.

(iv) [*Distributions of local share assessments to municipalities.* If a licensed gaming entity fails to reach the requisite annual minimum distribution as required under the act within 15 [banking] days following the end of the municipality's fiscal year, the Department will notify the licensed gaming entity of the shortfall and the amount to be remitted. A licensed gaming entity shall remit the difference required to meet the requisite annual minimum distribution as required under the act within 15 [banking] days following the end of the municipality's fiscal year. The licensed gaming entity shall remit the required payment to the Department for distribution in accordance with the act. Distributions specified in this chapter shall be made by the licensed gaming entity to the Department or the respective municipality, no later than 15 [banking] days from the Department's notice of the shortfall.

[(v)] (iv) *Distributions of local share assessments to counties.* The Department will make distributions in accordance with section 1403(c)(2) of the act. If the minimum distribution exceeds the applicable annual municipal allocation cap set forth in section 1403(c)(3) of the act, the amount in excess of the municipal allocation cap shall be distributed by the Department in accordance with section 1403(c)(2) of the act.

(6) The Department reserves the right, upon notice served upon the licensed gaming entity and the Board, to temporarily disable the licensed gaming entity's slot machines through the CCS until the Department receives verification that the required deposit has been made.

§ 1001.6. Administration of amounts deposited by licensed gaming entities with Treasury to pay Commonwealth gaming related costs and expenses (\$5 million).

(a) No later than 2 business days prior to the commencement of slot machine operations, the licensed gaming entity shall deposit \$5 million in the Department's Collection Account. Upon transfer of the \$5 million deposit into Treasury's Concentration Account, the deposit shall be credited to an account established in Treasury for the licensed gaming entity. The account established shall also be used to recognize and account for all future deposits required from the licensed gaming entity by the Department for administrative costs and all future withdrawals made by the Department for reimbursement of administrative costs.

(b) Each licensed gaming entity shall maintain a minimum account balance with Treasury of \$5 million.

(c) Moneys related to this account shall be transferred to the Department's Collection Account and from Treasury by EFT or other methods of funds transfer in accordance with § 1001.5(b) (relating to administration and distribution of moneys held by licensed gaming entities and the Commonwealth).

(d) If the account balance with Treasury of a licensed gaming entity falls below the \$5 million minimum deposit amount, as a result of the licensed gaming entity's failure

to make replenishments as directed by the Department, the Department will request that the Board utilize its reserved right to draw amounts from any other source of the licensed gaming entity and deposit the draw amount in the account specified by subsection (a) as necessary, to maintain the required minimum account balance. To fulfill the licensed gaming entity's obligations under this section, nothing prohibits the Board from drawing against any source of the licensed gaming entity, with the exception of any licensed gaming entity account that holds gross terminal revenue[,] to be deposited with Treasury in accordance with § 1001.5.

(e) Reimbursement of Commonwealth expenses **will be as follows:**

(1) The Department will issue to the licensed gaming entity, periodic assessments of expenses incurred by the Board, Department, Office of Attorney General, the Pennsylvania State Police and any other Commonwealth entity charged with administrative duties under the act, **regarding expenses directly related to the licensed gaming entity**, under budgets approved by the Board **and upon appropriation by the General Assembly as required in section 1402.1 of the act (relating to itemized budget reporting)**. Expenses not included in budgets approved by the Board may not be assessed against **[the account of]** the licensed entity under this section.

(2) Expenses incurred by the Commonwealth and assessed to the licensed gaming entity shall be charged back to the licensed gaming entity and deducted from the licensed gaming entity's account, as specified in section 1401 of the act (relating to slot machine licensee deposits) and this section.

(3) General administrative costs of the Commonwealth not specifically assessed to a licensed gaming entity **under paragraph (1)**, shall be borne by each licensed gaming entity **[on a prorata basis, determined by dividing the amount of the individual licensed gaming entity's gross terminal revenue by the total amount of gross terminal revenue of all licensed gaming entities] at the discretion of the Secretary of Revenue. [The allocation of expenses under this subsection, and not specifically allocated under paragraph (2) shall be subject to amendment by the Board.]**

§ 1001.7. Deposits of license, permit and other fees.

The fees for manufacturers' and suppliers' licenses, employment permits and other licenses and permits as the Board may require, excluding license fees paid for Categories 1, 2 and 3 licenses under sections 1209 and 1305 of the act (relating to slot machine license fee; and Category 3 slot machine license), shall be deposited with Treasury into a restricted receipt account within the State Gaming Fund. The fees deposited will be transferred from a restricted receipt account into a restricted revenue account of the State Gaming Fund to be used by the Board to pay its operating expenses. License fees paid for Categories 1, 2 and 3 licenses under sections 1209 and 1305 of the act shall be paid into the State Gaming Fund in accordance with sections 1209(d) and 1305 of the act.

§ 1001.8. State Gaming Fund transfers.

(a) *Application of section.* This section applies to the transfers of moneys to and from the State Gaming Fund.

(b) *Establish restricted receipt accounts.* The Governor's Budget Office has the authority to establish restricted

receipt accounts as required to facilitate transfers of moneys to and from the State Gaming Fund.

(c) *Quarterly distributions.* Quarterly distributions from the State Gaming Fund to counties or municipalities in which a licensed facility is located, as determined by the Board, and as specified in Chapter 14 of the act (relating to revenues), shall be performed in accordance with the Governor's Management Directive 305.4 (relating to payments to counties) and the following provisions:

(1) The Department will submit payment requisitions, accompanied by documentation, to the Office of the Budget for payment through Treasury. Payments shall be made payable to the board of county commissioners of the county, or in the case of home rule charter counties, to the chief executive officer of the county, or in the case of counties of the first class coterminous with cities of the first class, to the city treasurer, on behalf of the agency designated as recipient of the payment or disbursement to be credited to the account of the recipient agency for use as specified in the documentation.

(2) The Department will determine the annual inflation adjustment and will publish notice of the inflation adjustment in the *Pennsylvania Bulletin* by **[July 1] January 1** of each year.

(3) The Department will make distributions quarterly, no later than 30 days following the end of each calendar quarter.

(d) *Tax and credit against tax.*

(1) Determinations of gross terminal revenue and the calculations of taxes due will be determined **[daily]** by the Department based on the actual calculations by the CCS.

(2) **[Each banking day, the]** The Department will notify each licensed gaming entity and Treasury of the amount of tax due to the Commonwealth.

(3) **[Each banking day, each]** Each licensed gaming entity shall deposit the amount specified in paragraph (2) into the Department's Collection Account, in the manner prescribed by § 1001.5(b) (relating to administration and distribution of moneys held by licensed gaming entities and the Commonwealth).

(4) The Department will enter into an agreement with each licensed gaming entity setting forth the terms and conditions of any credit against tax as claimed by the licensed gaming entity.

(5) Taxes due as determined by the Department shall remain payable by the licensed gaming entity to the Department in accordance with section 1501(a) of the act (relating to responsibility and authority of department) regardless of any discrepancies between the licensed gaming entity's **[daily]** calculation and that of the Department's or amounts contested by any party concerning the credit against taxes due. Resolution of disputed **[daily]** payments due will be addressed by the Department through adjustments it makes to its calculation of future **[daily]** payment due amounts. The Department may make adjustments to its calculation of future **[daily]** payment due amounts after resolution of any dispute regarding the amount of taxes due. The Department will provide notice to the Board of the final calculations of taxes due under this subsection.

(6) Any **[daily]** remittance due that is caused by the imposition of the tax on nonbanking days as well as

holidays shall be remitted by the licensed gaming entity on the next banking day. For example, any tax that has accrued on Independence Day shall be transferred on the following banking day.

(e) *Imposition of a penalty.* Failure to comply with this section that results in the failure to transmit the requisite amounts to the Department's Collection Account or to any other fund of the Commonwealth, shall result in the imposition of a penalty of 5% per month up to a maximum of 25% of the amounts due and unpaid by the licensed gaming entity. Payments made by a licensed gaming entity toward delinquent amounts, including penalties, shall be allocated to the licensed gaming entity's delinquency in accordance with the priority of payments as specified under section 209 of the Taxpayers' Bill of Rights (72 P. S. § 3310-209).

§ 1001.9. State Gaming Economic Development Tourism Fund transfers.

(a) Department personnel will notify the respective licensed gaming entity and Treasury of the amounts the licensed gaming entity shall be required to deposit in the Department's Collection Account. Deposits shall be made on the same banking day as the date of the notice by the Department.

(b) Moneys shall be transferred by the licensed gaming entity by EFT or other method the Department may require and shall be deposited in the Department's Collection Account prior to being transferred to Treasury's Concentration Account.

(c) System problems or failures, such as power outages and states of emergency, will not excuse the licensed gaming entity from making the required deposits in a timely manner. The licensed gaming entity shall immediately notify the Department and the Board of the problems.

(d) The Department will maintain records of the Department's Collection Account under this chapter and will share information as practicable, to assist Treasury in its reconciliation of deposits into its Concentration Account.

§ 1001.10. Pennsylvania Race Horse Development Fund transfers.

(a) Prior to making each Race Horse Improvement Daily Assessment against a licensed gaming entity, the Department will determine the amount of each licensed gaming entity's gross terminal revenue.

(b) Eighteen percent of the gross terminal revenue of each Category 1 licensed gaming entity shall be returned to each active and operating Category 1 licensed gaming entity that conducts live racing subject to the assessment cap in section 1405(c) of the act (relating to Pennsylvania Race Horse Development Fund), and subject to the allocations specified in section 1406(a)(1)(i)—(iii) of the act (relating to distributions from Pennsylvania Race Horse Development Fund).

(c) Procedures concerning Pennsylvania Race Horse Development transfers are as follows:

(1) Department personnel will notify the respective licensed gaming entity and Treasury of the actual amount each licensed gaming entity shall be required to deposit in the Department's Collection Account as determined by the CCS. Deposits shall be made on the same banking day as the date of the notice by the Department.

(2) Moneys shall be transferred by the licensed gaming entity by EFT or other method as the Department may

require and shall be deposited in the Department's Collection Account prior to being transferred to Treasury's Concentration Account.

(3) System problems or failures, such as power outages and states of emergency, will not excuse the licensed gaming entity from making the required deposits in a timely manner. The licensed gaming entity shall immediately notify the Department and the Board of any of these problems.

(4) The Department will maintain records of the Department's Collection Account under this chapter and will share information as practicable, to assist Treasury in its reconciliation of deposits to its Concentration Account.

(d) The Department will notify each active and operating Category 1 licensee **conducting live racing**. Treasury and Office of the Budget of the amounts each active and operating Category 1 licensee **conducting live racing** will receive. **[A]** An eligible Category 1 licensee will receive from Treasury a weekly payment from the Pennsylvania Race Horse Development Fund in accordance with the act. The deposits required under section 1406(a)(1)(ii) will be deducted by the Department before making the payment to each active and operating licensee and transferred to the appropriate **[state]** State fund, under section 1406 of the act.

(1) Payments shall be electronically transferred by the Commonwealth and shall be available to the licensee by the deadline established by the Department.

(2) Both Treasury and the Department will maintain records of distributions under this chapter and will share information, as practicable, to assist each agency in its reconciliation process.

(e) For purposes of the calculations and distributions of section 1406(a) of the act, live racing will be determined annually, and as a Category 1 licensed gaming entity commences live racing in accordance with section 1303(b) of the act (relating to additional Category 1 slot machine license requirements).

§ 1001.11. Property Tax Relief Fund transfers.

The Department will determine the appropriate amount of moneys to be transferred into the Property Tax Relief Fund. The moneys will be transferred only after all amounts of funding have been met concerning the transfers of money to the other Funds specified in section 1408 of the act (relating to transfers from State Gaming Fund) **and other applicable laws.**

[Pa.B. Doc. No. 07-348. Filed for public inspection March 2, 2007, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 64]

[L-00060179]

Provision of Bundled Service Package Plans at a Single Monthly Rate by Local Exchange Carriers

The Pennsylvania Public Utility Commission, on June 22, 2006, adopted a proposed rulemaking order which permits a limited exception of the application of Chapter

64 billing requirements under certain conditions and authorizes local exchange carriers to offer single-priced bundled service packages.

Executive Summary

By Order entered July 3, 2006, at Docket No. L-00060179, the Commission adopted a Proposed Rulemaking Order to amend Chapter 64 of Commission regulations, 52 Pa. Code §§ 64.1—64.213. The purpose of the proposed rulemaking is to create an exception to the current obligation for separate billing by telecommunications carriers offering bundled service package plans, and to eliminate the necessity of obtaining a waiver of Chapter 64 separate billing regulations in 52 Pa. Code §§ 64.14(a)(4) and (5), 64.17, 64.18, 64.21(a), and 64.63(1) and (2), where certain consumer safeguards are in place.

Under the current language of Chapter 64, the Commission is required to review and approve or deny a request for waiver from Chapter 64's separate billing requirements. The proposed amendment to Chapter 64 eliminates the need for administrative review and approval of a waiver from separate billing requirements, provided certain consumer safe guards are met, while preserving the Commission's oversight authority. Specifically, the need for administrative hours devoted to review of applications for waiver from Chapter 64 separate billing requirements will be eliminated.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 15, 2007, the Commission 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 House and Senate Committees. 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 which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
June 22, 2006

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Provision of Bundled Service Package Plans at a Single Monthly Rate by Local Exchange Carriers;
Doc. No. L-00060179

Proposed Rulemaking Order

By the Commission:

By our order in *Petition of Trinsic Communications, Inc.*, Docket No. P-00052169, (Order entered Feb. 1, 2006), the Commission ordered Staff's review of Chapter 64 regulations to examine whether an amendment to those regulations may be advisable to adapt to the current trend in the telecommunications industry of offering multiple services together in single-priced billing packages. As we then noted:

... the Commission has consistently granted conditional waivers of various sections of Chapter 64¹ to allow telephone companies to offer bundled services packages.² The purpose of these waivers has been to permit companies to offer bundled services packages while still preserving the customer protections currently in place to enable consumers to maintain basic telephone service as long as they meet their payment obligations regarding basic service. Additionally, in the past year, the General Assembly passed a law to allow telephone companies to "offer and bill to customers on one bill bundled packages of services." 66 Pa.C.S. § 3016(e)(2).

As technology continues to advance and the desires of consumers change, we need to ensure that our regulatory framework is appropriately structured to recognize these developments. Our regulations should also provide the flexibility needed to better serve consumers while still ensuring that Pennsylvania maintains its high telephone service penetration rate. To that end, it is important for this Commission to reevaluate its current Chapter 64 regulations in light of statutory changes as well as new desires in consumer preferences.

Id at pp. 6-7.

Based upon Staff's evaluation of Chapter 64 and subsequent recommendations, we formally commence this rulemaking to propose certain amendments to Chapter 64 and seek comment from all interested parties on these proposed amendments, hereto set forth in Annex A. At the same time, to eliminate the need to act on repetitive waiver petitions, we will grant a temporary waiver of the applicable provisions of Chapter 64, effective until the final adoption of the regulations, provided that the necessary consumer safeguards are satisfied.

In order to ensure that the consumer protections under Chapter 64 are retained, the Commission has set forth certain conditions that local exchange carriers (LECs) offering bundled service packages need to satisfy before a waiver of the applicable Chapter 64 requirements is granted. See the Commission's *Secretarial Letter to all Competitive Local Exchange Carriers* regarding compliance with § 64.21, issued September 23, 2003, at Docket No. M-00031747; and *Petition of North Pittsburgh Telephone for Waiver of Certain Billing and Collection Rule Requirements*, Docket No. P-00011899 (Order entered Oct. 15, 2001).

The September 23, 2003, Secretarial Letter governs billing, disclosure statements, non-payment procedures, and notice of waiver requests for competitive local exchange carriers (CLECs) that offer single-price packages and request a waiver of Chapter 64 requirements. The

¹ Chapter 64 pertains to "Standards and Billing Practices for Residential Services" and became effective on January 1, 1985, 52 Pa. Code §§ 64.1—64.213

² See *Petition of Bell Atlantic—Pa., Inc. for Expedited Modification of Consent Order and Waiver of Certain Chapter 64 Requirements*, Docket No. C-00881727 (Order entered June 12, 1997); *Petition of North Pittsburgh Telephone for Waiver of Certain Billing and Collection Rule Requirements*, Docket No. P-00011899 (Order entered October 15, 2001); *Petition of Commonwealth Telephone Company for Waiver of Certain Billing and Collection Requirements*, Docket No. P-0021982 (Order entered December 20, 2002); *Secretarial Letter to All Competitive Local Exchange Carriers Re: Compliance with 52 Pa. Code § 64.21 Separate Billing for Basic Service*, Docket No. M-00031747 (issued September 23, 2003); *In re: Petition of Marianna and Scenery Hill Telephone Company for Waiver of Certain Billing and Collection Requirements Set Forth at 52 Pa. Code Chapter 64 to Permit Provision of Singly Priced Service Packages to Customers, including Residential Customers*, Docket No. P-00042124 (Order entered November 22, 2004); *Petition of Comcast Phone of Pennsylvania LLC for Waiver of Certain Billing and Collection Rule Requirements Set Forth at 52 Pa. Code Chapter 64 to Permit Provision of Singly Priced Service Packages to Customers, including Residential Customers*, Docket No. P-00042119 (Order entered August 12, 2005); and, *Petition of ACN Communication Services, Inc. for Waiver of Certain Billing and Collection Rule Requirements Set Forth at 52 Pa. Code chapter 64 to Permit Provision of Singly-Priced Service Packages to Customers*, Docket No. P-00052173 (Order entered October 28, 2005).

Secretarial Letter states that the Commission has granted petitions for such waivers previously but that these waivers have been contingent on the satisfaction of certain conditions.³ The Secretarial Letter details the conditions, as follows:

First, the company must agree that failure to pay the package charge will not result in immediate termination of basic service. Instead, the account will be converted to a basic service account which could be subject to future suspension or termination for non-payment in accordance with Commission regulations. Second, the company must provide a disclosure statement to all customers currently subscribed to a bundled service package and to all consumers being offered the opportunity to subscribe to a bundled service package. This disclosure statement, the content of which is subject to Commission review for consistency with plain language guidelines, notifies the customer of the billing practices that will be implemented in the event of the customer's failure to pay the bundled service package charge in full, informs the customer that they will not lose basic service for failure to pay the bundled service package charge, and identifies the charge that must be paid to maintain basic service.⁴

Secretarial Letter, issued September 23, 2003, at Docket No. M-00031747, p. 2, available through the search function found at www.puc.state.pa.us.

We note that while the Public Utility Code expressly grants local exchange telecommunications companies⁵ (incumbent local exchange carriers or ILECs) permission to offer single-rate package plans, 66 Pa.C.S. § 3016(e)(2), nothing in the Code precludes the Commission from authorizing competitive local exchange carriers (CLECS) to provide single-rate package plans. In fact, we believe that authorizing CLECS to provide such service packages advances two important policy goals: (1) to encourage diversity in services and products; and (2) to promote the provision of competitive services by a variety of service providers without jeopardizing universal service. See, 66 Pa.C.S. § 3011(5)(8).

Therefore, we are proposing to amend our regulations to permit a limited exception to the application of the Chapter 64 billing requirements, where the company meets certain conditions regarding protection of basic service and provision of a disclosure statement. In particular, the proposed amendment to Chapter 64 in Annex A, adds § 64.24 to Chapter 64 which authorizes LECs to offer single-priced bundled service packages and incorporates the same conditions previously established by Commission Order, including: (1) an agreement by the local exchange carrier that basic service will not be immediately suspended for failure of a customer to pay in full the monthly charge for the bundled service package; and (2) the provision of a bundled service package disclosure statement to customers who are offered, or who already subscribe to a bundled service package. This amendment creates an exception to the application of Chapter 64,

which remains in effect where the circumstances addressed in this order are not at issue.

At the same time, to eliminate the need to act on repetitive waiver petitions, we will grant, by this order, a temporary waiver of Chapter 64 billing requirements to the extent necessary to permit LECs to offer bundled service packages without petitioning the Commission, so long as the conditions previously set forth in the September 23, 2003, Secretarial Letter are met. Compliance with these conditions obviates the requirement that CLECS petition the Commission for a waiver of the applicable Chapter 64 regulations, including 52 Pa. Code §§ 64.14(a)(4) and (5), 64.17, 64.18, 64.21(a) and 64.63(1) and (2). We note that the temporary waiver of these regulations operates only to the extent required to facilitate the offering of bundled service packages. See, e.g., *Petition of North Pittsburgh Telephone for Waiver of Certain Billing and Collection Rule Requirements*, P-00011899 (Order entered Oct. 15, 2001), p.2, fn. 2-4. The temporary waiver granted by this order will remain in effect pending final resolution of this rulemaking.

All interested parties are invited to submit comments on the proposal set forth in Annex A. We propose to amend Chapter 64 of our regulations by adding 52 Pa. Code § 64.24, which will authorize all LECs to offer bundled service packages at a single monthly rate, so long as consumer protections are observed. Accordingly, pursuant to sections 501, 1501, and 1504 of the Public Utility Code, 66 Pa.C.S. § 501, § 1501 and § 1504, and the Commonwealth Documents Law, 45 P.S. §§ 501 et seq., and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we propose to amend the regulations in 52 Pa. Code Chapter 64 as previously noted and as set forth in Annex A; *Therefore*,

It Is Ordered That:

1. The proposed amendments to 52 Pa. Code Chapter 64, as set forth in Annex A, be issued for comment.
2. The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.
3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this order and Annex A for review and comments by the Independent Regulatory Review Commission and the designated Legislative Standing Committees of both Houses of the General Assembly.
5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. A copy of this order and Annex A shall be posted on the Commission's Web site and served on all jurisdictional local exchange carriers, the Pennsylvania Telephone Association, the Broadband Cable Association of Pennsylvania (BCAP), the Public Utility Law Project, Competitive Telecommunications Association (COMPTEL), the Office of Trial Staff, Office of Consumer Advocate and Office of Small Business Advocate.
7. Interested persons may submit an original and 15 copies of written comments to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 within 30 days from the date this order is published in the *Pennsylvania Bulletin*. A paper copy and an electronic copy of filed comments shall be provided to the Commission contact persons listed in ordering paragraph 8.

³ Citing *Petition of Bell Atlantic-Pa., Inc. for Expedited Modification of Consent Order and Waiver of Certain Chapter 64 Requirements*, C-00881727 (Order entered June 12, 1997); *Petition of North Pittsburgh Telephone for Waiver of Certain Billing and Collection Rule Requirements*, P-00011899 (Order entered Oct. 15, 2001); and *Petition of Commonwealth Telephone Co. for Waiver of Certain Billing and Collection Requirements*, P-00021982 (Order entered Dec. 20, 2001).

⁴ These conditions are consistent with the Federal Communications Commission's ("FCC") Truth-in-Billing standard that carriers identify on customer bills the charges for which failure to pay will not result in disconnection of basic service. See CC Docket No. 98-170; FCC 00-111, released July 13, 2000.

⁵ A local exchange telecommunications company is defined at 66 Pa.C.S. § 3012 as "an incumbent carrier authorized by the commission to provide local exchange telecommunications services."

8. The contact persons for this matter are Elizabeth Lion Januzzi, Assistant Counsel, Law Bureau, (717) 772-0696, elionjanuz@state.pa.us; and Holly Frymoyer, Telecommunications Policy and Evaluation Unit Supervisor, Bureau of Consumer Services, (717) 783-1628, mfrymoyer@state.pa.us. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597, sdelbiondo@state.pa.us.

9. Pending the final resolution of this rulemaking, the Chapter 64 separate billing requirement, including 52 Pa. Code §§ 64.14(a)(4) and (5), 64.17, 64.18, 64.21(a), and 64.63(1) and (2), are temporarily waived to the extent necessary to permit all LECs to offer bundled services packages, provided that the LEC agrees to the conditions set forth in the Secretarial Letter issued September 23, 2003, at Docket No. M-00031747.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-251. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 64. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL TELEPHONE SERVICE

Subchapter B. PAYMENT AND BILLING STANDARDS

(Editor's Note: The following section is new. It has been printed in regular type to enhance readability.)

§ 64.24. Provision of bundled service packages at a single monthly rate.

An LEC may offer bundled packages of services including nontariffed, competitive, noncompetitive, basic service or services of an affiliate, combined in a single package plan at a single monthly rate, under the following conditions:

(1) The LEC may not suspend or terminate a customer's basic service when the customer fails to make payment on the bundled service package, in accordance with § 64.21(b) (relating to separate billing for basic service).

(2) When a customer fails to make payment on a bundled service package, the LEC shall convert the customer's service to a basic service plan, subject to future suspension or termination for nonpayment in accordance with Commission regulations in §§ 64.61—64.63, 64.71—64.74 and 64.101—64.111 for suspension, and §§ 64.121—64.123 for termination.

(3) The LEC provides a disclosure statement to customers subscribing to or being offered a bundled service package. The bundled service package disclosure statement must contain the following:

(i) A statement that a customer's basic service may not be suspended or terminated when the customer fails to make payment in full on the monthly charge for the bundled service package.

(ii) A statement that, in the event of nonpayment or partial payment on a bundled service package, a customer shall receive a notice of suspension for the bundled

service package advising the customer that the bundled service package will be converted to a basic service plan at the current basic service rate in the LEC's tariff, stated in dollar amount.

(4) The LEC may offer payment agreements for past-due amounts on bundled service packages.

(5) Notices issued by the LEC pertaining to the bundled service package, including the disclosure statement, a suspension or termination notice, or other communication, will be subject to Commission review and approval for compliance with Commission regulations and consistency with plain language guidelines in § 69.251 (relating to plain language—statement of policy).

[Pa.B. Doc. No. 07-349. Filed for public inspection March 2, 2007, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Continuing Education Fee for Certified Registered Nurse Practitioners

The State Board of Nursing (Board) proposes to amend § 21.253 (relating to fees) to read as set forth in Annex A. Section 21.253 is amended by setting an application fee for approval of certified registered nurse practitioner (CRNP) continuing education courses.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 8.1(c) and 11.2(a) and (d) of the Professional Nursing Law (act) (63 P. S. §§ 218.1(c) and 221.2(a) and (d)).

Background and Purpose

Section 8.1 of the act requires each CRNP to complete, in the 2 years prior to CRNP certification renewal, at least 30 hours of continuing education approved by the Board. For a CRNP with prescriptive authority, the 30 hours of continuing education must include at least 16 hours in pharmacology. In initially promulgating regulations to implement CRNP continuing education in 2004, the Board preapproved continuing education courses offered by the following providers: Board-approved CRNP programs, the American Nurses Credentialing Center's Commission on Accreditation, the American Academy of Nurse Practitioners, the National Association of Pediatric Nurse Practitioners and the American Medical Association. See § 21.334(a) (relating to sources of continuing education). Although the Board anticipated that these providers would develop and offer the vast majority of programs for CRNP continuing education, the Board also recognized that other entities would provide CRNP continuing education. Accordingly, by that rulemaking the Board also provided in § 21.334(b) that any other provider of CRNP continuing education could seek approval of its courses and in § 21.334(c) that an individual CRNP could seek approval of a continuing education course the CRNP intended to take. Section 21.336(b) (relating to continuing education course approval) provides that an applicant for approval of a CRNP continuing education

course must pay the fee required by § 21.253. That section, however, did not set the fee.

Section 11.2(a) and (d) of the act requires the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses for enforcement of the act are funded through biennial license renewal fees. The various licensing boards of the Bureau of Professional and Occupational Affairs (Bureau) attempt to recover expenses regarding services which are provided directly to individuals, such as applications, verification of licensure or provision of required review and approval, directly through fees in which the actual cost of providing the service forms the basis for the fee. Actual cost calculations are based upon the product of the average time necessary to perform the function and the pay rate for the classification of the personnel performing the function, together with a proportionate share of administrative overhead.

The Board now proposes to implement the fee necessary for an application for approval of CRNP continuing education courses offered by providers that are not on the preapproved provider list. In this proposed rulemaking, the fee for the service provided would be implemented to allocate costs to those who use the service or application.

Description of Proposed Amendment

Based on estimates provided by the Bureau's Revenue Office, the Board proposes a fee of \$100 for approval of a CRNP continuing education course. The fee was calculated based on an estimate of the Board staff and resources that will be expended to review and approve a CRNP continuing education course.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on members of the private sector who apply for services from the Board. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

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 February 21, 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 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*. Reference No. 16A-5128 (CRNP CE course approval fee) when submitting comments.

MARY E. BOWEN, R. N., CRNP,
Chairperson

Fiscal Note: 16A-5128. 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 C. CERTIFIED REGISTERED NURSE PRACTITIONERS

GENERAL PROVISIONS

§ 21.253. Fees.

The following fees are charged by the Board:

* * * * *

Application for approval of CRNP continuing education course..... \$100

[Pa.B. Doc. No. 07-350. Filed for public inspection March 2, 2007, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Supplies and Equipment

The State Board of Pharmacy (Board) proposes to amend §§ 27.14 and 27.16 (relating to supplies; and construction and equipment requirements) to read as set forth in Annex A. The proposed rulemaking would delete references to specific supplies that a pharmacy must maintain and instead allow pharmacies to maintain equipment to enable them to prepare and dispense prescriptions properly within their scope of practice. The proposed rulemaking would also delete the reference to the specific measurement of a pharmacy sink.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 4(j) and 6(k)(1) and (9) of the Pharmacy Act (act) (63 P. S. §§ 390-4(j) and 390-6(k)(1) and (9)).

Background and Need for Amendments

Section 27.14(c) currently lists specific supplies and equipment that pharmacies must maintain (except phar-

macies operating as central processing centers). Certain items on this list are outdated and not used in pharmacies anymore. Other items on the current list are not used in pharmacies that have specific practice areas, such as compounding pharmacies, nuclear pharmacies, veterinary pharmacies and so forth. This rulemaking proposes to amend § 27.14(c) by deleting the specific list of supplies and equipment and replacing it with language that permits a pharmacy to maintain supplies and equipment that are necessary to that pharmacy's area of practice. In addition, there are more advanced balances, scales and weights available than those specified in § 27.14(c)(1) and (2). There are also more advanced measuring tools than the graduates specified in § 27.14(c)(4). The remaining supplies in § 27.14(c)(5), (6), (7), (9) and (10) are outdated and not needed in most pharmacies. These supplies simply sit on the shelves unused. The Board is also deleting § 27.14(c)(9) because it is repetitive with the requirement that pharmacies keep records of prescriptions of controlled substances in accordance with the requirements of the Federal Drug Enforcement Administration in 21 CFR 1304.04(h) (relating to maintenance of records and inventories).

Section 27.16(b) currently requires that a pharmacy have a sink that measures at least 200 square inches exclusive of drainboard area. The Board proposes to delete the reference to specific measurements of the sink. The Board believes it is unnecessary to specify the size of the sink given the purposes for which it is used, such as hand washing and cleaning compounding equipment.

Description of Proposed Amendments

The proposed amendments to § 27.14 would delete the specific list of supplies and equipment in subsection (c)(1)–(10). The proposed amendment adds language that requires a refrigerator equipped with a thermometer or a temperature-monitoring device, which is used solely for the storage of drugs requiring refrigeration. This is the only specific equipment that the Board proposes to keep in the regulation but with amended language to make it clear that the refrigerator is not to be used for food storage.

The proposed amendment to § 27.16 deletes the specific measurements for the pharmacy sink.

Fiscal Impact

The proposed rulemaking would have no fiscal impact on the Commonwealth, its political subdivisions, the public or the regulated community.

Paperwork Requirements

The proposed rulemaking will not impose any additional paperwork requirements on the Commonwealth or the regulated community.

Sunset Date

The Board reviews the effectiveness of its regulations on an ongoing basis. 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 February 21, 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 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 Melanie Zimmerman, Executive Secretary, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-26409 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

EDWARD J. BECHTEL, R.Ph.,
Chairperson

Fiscal Note: 16A-5415. 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 27. STATE BOARD OF PHARMACY STANDARDS

§ 27.14. Supplies.

* * * * *

(c) [**Except for a pharmacy operating as a central processing center, a**] A pharmacy shall maintain at least the following equipment and supplies:

(1) [**A Class A prescription balance or other scale with a no-load sensitivity of 6 milligrams or less.**

(2) **Both an apothecary set of weights from 1/2 grain to 1 ounce and a set of metric weights from 10 milligrams to 50 grams.**

(3) **A mechanical refrigerator having the appropriate temperature control for the storage of the drugs, vaccines, biologicals or medicaments which require specific temperatures for their stability. The refrigerator shall be kept within the prescription area.**

(4) **At least four graduates assorted to measure 1 ml to 500 ml.**

(5) **At least two mortars and pestals, glass or wedgewood.**

(6) **At least three spatulas of assorted sizes, metallic-rust resistant and rubber or nonmetallic composition.**

(7) **At least two funnels, one 120 ml and the other 480 ml.**

(8) **One glass or tile slab or specially treated paper for use in compounding ointments.**

(9) A book to record sales and transfers of Schedule V controlled substances and poisons. This paragraph does not apply to an institutional pharmacy servicing only inpatients.

(10) An adequate supply of filter paper and powder papers and an adequate supply of empty capsules, prescription containers, prescription and poison and other applicable identification labels used in dispensing of prescription drugs and medication.]

A refrigerator, used solely for the storage of drugs requiring refrigeration, equipped with a thermometer or a temperature monitoring device.

[(11)] (2) * * *

[(12)] (3) * * *

[(13)] (4) * * *

(5) Additional equipment and supplies necessary to enable the pharmacy to properly prepare and dispense prescriptions consistent with its scope of practice.

[(14)] (6) * * *

* * * * *

§ 27.16. Construction and equipment requirements.

* * * * *

(b) Building standards. The following apply to building standards:

* * * * *

(5) Sanitary facilities. [Except for pharmacies operating as central processing centers, pharmacies] Pharmacies shall be equipped with a sink within the prescription area to be used solely for pharmaceutical purposes. [The sink must measure at least 200 square inches exclusive of drainboard area.] The sink must be connected properly to supply hot and cold water. Restroom facilities for employees of the pharmacy shall be provided reasonably close to, but outside of the prescription area.

* * * * *

[Pa.B. Doc. No. 07-351. Filed for public inspection March 2, 2007, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31] Professional Conduct

The State Board of Veterinary Medicine (Board) proposes to amend § 31.21 (relating to Rules of Professional Conduct for Veterinarians) to read as set forth in Annex A. The amendments to Principle 1 (relating to competency) would mandate that a veterinarian report to the Board certain conduct regarding issues of professional competency of another veterinarian. Amendments to Principle 3 (relating to professional behavior) would state more comprehensively conduct that is unprofessional. In addition, the Board proposes to amend Principle 7 (relat-

ing to veterinarian/client relationships) to specify limits on refusal or discontinuation of treatment.

Effective Date

The proposed rulemaking would become effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(1) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.5(1)) authorizes the Board “[a]dopt reasonable rules and regulations governing the practice of veterinary medicine as are necessary to enable it to carry out and make effective the purpose and intent of this statutory law.” Section 5(2) of the act authorizes the Board to “[a]dopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.”

Background and Need for Amendment

The Board’s proposed amendments arise from the Board’s ongoing review and commitment to keeping its regulations consistent with current standards of veterinary medicine practice, from disciplinary matters that have come before the Board and from input from the public regarding the need to regulate in particular areas of professional conduct.

Description of Proposed Rulemaking

The Board proposes to amend Principles 1, 3 and 7 as follows:

Proposed Amendment to Principle 1

Subsections (a)—(c) concern the duty of veterinarians to maintain the aspirational goals of competency in the veterinarian’s individual practice. Current subsection (d) concerns a veterinarian’s responsibility concerning issues regarding the professional competency of another veterinarian.

The Board proposes to amend subsection (d) to make mandatory a veterinarian’s duty to report to the Board when a veterinarian has been unable to informally resolve with another veterinarian an issue of gross professional incompetence. The Board’s current regulation is aspirational. The Board proposes to make the duty to inform the Board mandatory. In a related amendment, the Board proposes to amend Principle 3 by adding subsection (k) to provide that unprofessional conduct includes failing to report a matter described in Principle 1(d) to the Board.

Proposed Amendments to Principle 3

The Board proposes to maintain Principle 3(a)—(d) and add subsections (e)—(l). The Board has amended Principle 3 to clarify that a licensee may be disciplined for unprofessional conduct under section 21 of the act (63 P. S. § 485.21). Specifically, a licensee may be disciplined under section 21(1) of the act for willful or repeated violations of any of the rules and regulations of the Board. A licensee may be disciplined under section 21(20) of the act for professional incompetence. This proposed rulemaking clarifies this statutory term. Some of the examples of incompetent, unprofessional or immoral conduct may also subject a licensee to discipline under other subsections of section 21 of the act. For example, the Board believes that fraudulently issuing a health certificate is immoral conduct. This conduct may also be disciplined under section 21(6) of the act.

Proposed subsection (e) would prohibit a veterinarian from attempting to induce or attempting to influence,

through coercion, undue pressure or intimidation, a person to file, not file or withdraw a complaint before the Board. Licensees subject themselves to the jurisdiction of the Board, including the statutory and regulatory rules of conduct and processes for disciplining professional licenses. This process includes the ability of the public to file a complaint against a professional licensee, to have that complaint investigated and, when appropriate, to have formal charges brought against the licensee in accordance with the licensing act and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law). A licensee who attempts to induce or inappropriately influence a member of the public to file, not file or withdraw a complaint has attempted to undermine the disciplinary process of the Board. The Board concludes that this conduct is unprofessional.

Proposed subsection (f) would prohibit a veterinarian from abusing a client, former client, colleague, associate or staff, including verbal abuse, harassment or intimidation. The proposed language adds necessary specificity to allow the Board to discipline licensees for certain misconduct.

Proposed subsection (g) relates to section 21(11) of the act, which authorizes the Board to discipline a licensee for “[i]ncompetence, gross negligence or other malpractice, or the departure from, or failure to conform to, the standards of acceptable and prevailing veterinary medical practice.” Proposed subsection (g) also relates to section 21(20) of the act, which authorizes the Board to discipline a licensee for “[p]rofessional incompetence.” Proposed subsection (g) would clarify that the two statutory prohibitions against incompetence encompass both performing a task incompetently and performing a task the licensee knows or was reason to know he is not competent to perform. Subsection (g) is consistent with the Commonwealth Court’s opinion of conduct prohibited by section 21(11) and (20) of the act.

Proposed subsection (h) prohibits a veterinarian from making a false, deceptive or misleading statement or claim as defined in Principle 5(a) (relating to advertising). While Principle 5 applies only to advertising, the Board believes that veterinarians should be prohibited from making false, deceptive or misleading statements or claims in all aspects of context professional practice, such as in a conversation with a client.

Proposed subsection (i) would prohibit a veterinarian from delegating a veterinary medical service to a certified veterinary technician or unlicensed person who the veterinarian knows or should know is not qualified by education, training, experience, license or certification to perform the service. In addition, the new subsection requires a veterinarian to make a reasonable investigation of the delegatee’s education, training, experience, license or certification before delegating a veterinary medical service. Finally, the proposed subsection requires the veterinarian to provide appropriate supervision to the delegatee.

Proposed subsection (j) prohibits a veterinarian from inhumanely treating or abusing an animal, whether or not the animal is a patient. This provision is consistent with the acceptable and prevailing ethical standards of the profession and with many states’ practice acts and regulations.

Proposed subsection (k) prohibits a veterinarian from failing to report another licensee to the Board when the veterinarian knows or has reason to believe the licensee has engaged in incompetent practice, unprofessional conduct or animal neglect or abuse.

Proposed Amendments to Principle 7

As with the proposed amendments to Principle 3, the proposed amendments to Principle 7 clarify and expand existing provisions. Consistent with the statutory amendments of December 2002, defining the “veterinarian-client-patient relationship” in section 3 of the act (63 P. S. § 485.3), Principle 7 will be renamed “veterinarian-client-patient relationships” to mirror statutory language and reflect the duties required to both the client/owner and the patient/animal. The Board proposes two amendments to provide additional clarity to existing subsection (a).

The Board proposes to add exceptions to the general rule that veterinarians may choose whom they will serve to account for circumstances in which a veterinarian is presented with an animal in a life-threatening condition that is physically presented to the veterinarian during the veterinarian’s regular business hours. The proposed amendment provides that a veterinarian shall, at a minimum, triage the animal (evaluate the need for immediate treatment in light of the other cases currently requiring treatment by the veterinarian), assess the animal, determine the animal’s prognosis, and provide basic life support or euthanasia. This provision places on veterinarians a minimal duty that will allow an owner to determine whether further treatment should be sought. The amendment recognizes that a sole practitioner who may be in the middle of surgery when an animal is brought into the veterinary facility in a life-threatening condition may not always be able to step away from the surgery to attend to the emergent animal. The proposed language requiring the veterinarian to triage the animal ensures that the animal will be taken care of in the proper order of medical necessity.

The proposed rulemaking permits a veterinarian to provide care to an animal in a life-threatening condition without the owner’s consent if the owner is unknown or cannot be reached for consultation. This provision would allow a veterinarian to provide emergency treatment to, for example, a dog hit by a car that is brought in by a bystander without first having to find the owner. This provision would also allow a veterinarian to euthanize an animal brought to the veterinary facility in a life-threatening condition without the owner’s consent if, in the veterinarian’s professional judgment, euthanasia is the only appropriate option.

The Board proposes to require a veterinarian to give notice to a client if the veterinarian determines that he can no longer provide veterinary services to an animal and to allow the client reasonable time to obtain alternate veterinary care. This provision protects the public by ensuring that the public will have a reasonable time to find another veterinarian.

The Board proposes to amend subsection (b) to make mandatory the veterinarian’s duty with regard to balancing a client’s ability to pay for veterinary services and alleviating or ending an animal’s suffering. The proposed amendments to subsection (b) are related to the proposed amendments to subsection (a), in that, read together, the provisions require a veterinarian to provide limited emergency care or medically appropriate euthanasia without regard to a client’s ability to pay. These provisions do not limit the veterinarian from seeking, after the services have been provided, remuneration for the services through an appropriate judicial forum.

The Board proposes to delete the current text of subsection (d). As with a similar provision that the Board

proposes to delete from subsection (a), the Board believes that the concept is self-evident and does not need to be set forth in regulation.

The Board proposes significant amendments to current subsection (e), which will become subsection (d). An individual approached the Board with the suggestion that the Board mandate that veterinarians inform clients of the contraindications and possible side effects of nonsteroidal anti-inflammatory drugs (NSAIDs). The individual suggested that the Board mandate that veterinarians provide a "client information sheet" whenever the veterinarian dispenses an NSAID. The Board is aware that some drugs of this class have been documented to cause adverse reactions in dogs. In addition, as with all drugs, NSAIDs are not indicated for use in animals with certain health problems or for animals receiving certain other drug therapies.

The Board believes that its regulations should provide broad protection to the public in relation to veterinary medical diagnosis and treatment rather than focusing on one narrow class of drugs. The Board addressed this concern in proposed subsections (d) and (e) and in a separate rulemaking package with proposed amendments to § 31.22(d) (relating to recordkeeping rationale). The Board finds that the public protection will be advanced by requiring veterinarians to be aware of drug contraindications, to inform clients of the benefits, risks and side effects of all recommended treatments, from surgeries to drug therapies, and to document client consent or rejection of treatment, including drug therapy, in the animal's veterinary medical record. The Board proposes the following amendments to ensure that consumers of veterinary medical services are well informed:

(d) Veterinarians shall familiarize themselves with advancements in veterinary medicine, including new techniques, drugs and scientific research that may affect treatment decisions. Veterinarians shall be familiar with the pharmacologic properties and contraindications of drugs and biologics used in their practice.

(e) Veterinarians shall explain the benefits, risks and side effects of treatment alternatives to clients.

In addition, in a separate rulemaking, the Board is proposing the following amendment to § 31.22(d):

The veterinary medical record shall document all communication with the client, including the client's consent to or rejection of recommended diagnostic testing and treatment, including drugs. A veterinarian in production animal practice may document client communication at the veterinarian's discretion.

The Board's proposal, because it also applies to biologics, would require veterinarians to be familiar with and to inform clients of the risks and possible side effects of vaccines. The proposed rulemaking, because it applies to all veterinary medical treatments, would require a veterinarian to explain the pros and cons of all treatments. For example, a veterinarian presented with an animal with a broken limb would be required to explain the benefits, risks and side effects of a range of treatment options, such as surgery and internal reduction and fixation, external reduction and fixation through use of a cast, or, where there is a good potential for a successful outcome, external reduction and fixation through use of some type of splint. Principle 4 (relating to fees) already provides that a veterinarian must clearly explain fees for professional services in advance of billing. This provision, together with the Board's proposed amendments to Prin-

ciple 7 and its recordkeeping regulation, would require a veterinarian to also inform the client of the cost of the various treatment options. The Board finds that this broader regulation provides more protection to the public than the suggestion that veterinarians provide clients with a "client information sheet" when the veterinarian dispenses an NSAID.

Dr. Paul Kneply, chairperson of the Department of Agriculture's Animal Health and Diagnostic Commission, submitted comments to the Board on its draft rulemaking. In his comments, Dr. Kneply asked about the implications of proposed subsection (f) for "normal farming activities and practices used in production animal medicine, such as castration and dehorning." Dr. Kneply noted: "A veterinarian may not normally administer anesthesia for these practices," and asked whether the proposed language would "prohibit 'normal animal agricultural practices' without anesthesia and pain medication." The Board is aware that the acceptable and prevailing standard of veterinary medical practice in production animal medicine does not always include the administration of anesthesia or analgesia for the performance of procedures that, if performed on a companion animal, would require the administration of anesthesia or analgesia, or both. For this reason, the Board has amended the draft language of subsection (f) and now proposes the following: "Veterinarians shall serve as patient advocates especially as regards alleviation of pain and suffering, consistent with the acceptable and prevailing standards of veterinary medical practice. Veterinarians must remain abreast of analgesic drugs, dosages, treatment intervals and combination therapies proven to be safe and effective in different species and in various conditions of age, illness or injury."

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should not have financial impact on licensees, the Board or any other State entity. The proposed rulemaking will have no fiscal impact on the public. There are no additional paperwork requirements associated with the proposed rulemaking.

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 February 21, 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 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 pro-

posed rulemaking to Robert Kline, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us/vet within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

THOMAS J. MCGRATH, D.V.M.,
Chairperson

Fiscal Note: 16A-5721. 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 31. STATE BOARD OF VETERINARY MEDICINE

PROFESSIONAL CONDUCT

§ 31.21. Rules of Professional Conduct for Veterinarians.

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Principle 1. Competency.

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(d) Veterinarians shall safeguard the public and the veterinary profession against veterinarians deficient in professional competence or ethical conduct as described in this chapter. When [**veterinarians know or have**] a **veterinarian knows or has** reason to believe that a professional colleague's actions [**reflect**] **demonstrate** professional incompetence, neglect or animal abuse, [**veterinarians having first hand knowledge of these activities**] a veterinarian should [**attempt to resolve the issue informally by bringing**] bring the behavior to the attention of the [**veterinarian**] colleague and, if the matter is not resolved, should bring the matter to the attention of the Board. [**When a veterinarian cannot deal with the situation informally, the veterinarian should**] If the conduct is grossly incompetent, or involves neglect or animal abuse, the veterinarian shall bring the matter to the attention of the Board by [**writing to the Complaints Office of**] filing a complaint with the Bureau of Professional and Occupational Affairs, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649.

* * * * *

Principle 3. [Professional behavior] Unprofessional conduct.

A veterinarian who engages in unprofessional or immoral conduct is subject to disciplinary action under section 21(1) of the act (63 P. S. § 485.21(1)) and may also be subject to discipline under section 21(11) or 21(20) of the act. Unprofessional or immoral conduct includes, but is not limited to:

[(a) Veterinarians may not place their] (1) Placing the veterinarian's professional knowledge, attainments or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

[(b) Veterinarians may not perform or participate] (2) Performing or participating in a surgical procedure when [**they know**] the veterinarian knows that surgery has been requested with intent to deceive a third party.

[(c) Veterinarians may not perform] (3) Performing surgical procedures on a species for the purpose of concealing genetic defects in animals to be shown, raced, bred or sold. If the health or welfare of an animal requires correction of a genetic defect, the surgical procedures will be permitted. In these instances, the veterinarian should clearly note the reason for the surgery on the veterinary medical record of the animal.

[(d) Veterinarians may not engage] (4) Engaging in merchandising.

(5) Attempting to influence through coercion, undue pressure or intimidation, or attempting to induce an individual to file, not file or withdraw a complaint with the Board.

(6) Abusing a client, former client, colleague, associate or employee, including verbal abuse, harassment or intimidation.

(7) Performing a veterinary medical act incompetently or performing a veterinary medical act that the licensee knows or has reason to know he is not competent to perform.

(8) Making any false, misleading or deceptive statement or claim as defined in Principle 5(a) (relating to advertising).

(9) Delegating a veterinary medical service to a certified veterinary technician or unlicensed person who the licensee knows or should know is not qualified by education, training, experience, license or certification, to perform. The licensee shall perform a reasonable investigation of the delegatee's skills before delegating a veterinary medical service and provide supervision of the service consistent with the acceptable and prevailing standards of veterinary medical practice.

(10) Inhumanely treating or abusing any animal, whether or not the animal is a patient.

(11) Failing to report a matter to the Board as required by Principle 1(d) (relating to competency).

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Principle 7. Veterinarian/client/patient relationships.

(a) [Veterinarians] Except as provided in this section, veterinarians may choose whom they will serve. [Once they have undertaken the care of an animal, however, they may not neglect the animal.]

(1) During a veterinarian's regular business hours, a veterinarian may not refuse to treat an animal which is in a life-threatening condition at the time the animal is physically presented to the veterinarian at the veterinarian's facility. The minimum veterinary medical services that shall be provided include triage of the presenting emergency and other patients present at the facility, assessment of the animal's condition, evaluation of the animal's prognosis and provision of basic life support or euthanasia, as medically appropriate. A veterinarian may provide care for an animal under this paragraph notwithstanding the lack of a

veterinarian/client/patient relationship and if the owner is unknown or cannot be reached, without consent of the owner.

(2) If a veterinarian deems it necessary to discontinue the treatment of an animal with which the veterinarian has a veterinarian/client/patient relationship, the veterinarian shall give notice to the client of the intention to withdraw and provide reasonable time to allow the client to obtain necessary veterinary care for the animal.

(b) [In their relations with clients, veterinarians should] Veterinarians shall consider first the welfare of the animal for the purpose of relieving suffering and disability while causing a minimum of pain or fright. [Benefit to the animal should] Alleviating or ending suffering for the animal shall transcend personal advantage or monetary gain in decisions concerning therapy.

* * * * *

(d) [Veterinarians shall be fully responsible for their actions with respect to an animal from the time they accept the case until the animal is released from their care.

(e) In the choice of drugs, biologics or other treatments, veterinarians should use their professional judgment in the interests of the animal, based upon their knowledge of the condition, the probable effects of the treatment and the available scientific evidence that may affect these decisions.]

Veterinarians shall familiarize themselves with advancements in veterinary medicine, including new techniques, drugs and scientific research that may affect treatment decisions. Veterinarians shall be familiar with the pharmacologic properties and contraindications of drugs and biologics used in their practice.

(e) Veterinarians shall explain the benefits, risks and side effects of treatment alternatives to clients.

(f) Veterinarians shall serve as patient advocates especially as regards alleviation of pain and suffering, consistent with the acceptable and prevailing standards of veterinary medical practice. Veterinarians shall remain abreast of analgesic drugs, dosages, treatment intervals and combination therapies proven to be safe and effective in different species and in various conditions of age, illness or injury.

(g) If a client desires to consult with another veterinarian about the same case, the first veterinarian shall readily withdraw from the case, indicating the circumstances on the veterinary medical record of the animal, and shall forward copies of the animal's veterinary medical records to other veterinarians who request them.

[(g)] (h) * * *

[Pa.B. Doc. No. 07-352. Filed for public inspection March 2, 2007, 9:00 a.m.]
