

# PROPOSED RULEMAKING

## DEPARTMENT OF EDUCATION

[ 22 PA. CODE CH. 171 ]

### Auditing of Approved Private Schools and Chartered Schools for the Education of Deaf and Blind Children

The Secretary of Education (Secretary) proposes to amend Chapter 171 (relating to standards for approved private schools) to read as set forth in Annex A.

#### *Statutory Authority*

The Secretary acts under the authority of sections 1376(c.8) and 1376.1(f.5) of the Public School Code of 1949 (code) (24 P. S. §§ 13-1376(c.8) and 13-1376.1(f.5)), which were added by section 5 of the act of July 13, 2005 (P. L. 226, No. 46). Sections 1376(c.8) and 1376.1(f.5) of the code empower the Department of Education (Department) to promulgate standards for auditing of approved private schools and the four chartered schools for the education of the deaf and the blind (hereinafter collectively referred to as schools).

#### *Purpose*

The objective of these proposed audit standards is to ensure that revenues provided by the Commonwealth for approved students and the expenses of the schools have been presented appropriately in accordance with Generally Accepted Accounting Principles (GAAP). Interim standards were adopted on April 7, 2006. After a year under these interim standards, the Department was to prepare and propose final standards, which are the standards set forth in Annex A. The changes proposed to the interim standards are described as follows.

Section 171.202 (relating to general guidelines) is amended to limit the content of the independent auditors report to the approved private school program. This is because some approved private schools are components of larger organizations and the audits and reports governed by these standards do not encompass the entire corporate organization.

In §§ 171.206 and 171.207 (relating to administrative costs; and payments in excess of expenditures), the references to "the PDE 4010 process" have been replaced with the title of the form—the "Application for Educational Assignment to Approved Private School"—to promote clarity of language. Also, subsection (a) of the interim standard has been deleted because it applies to prior fiscal years and is no longer relevant.

#### *Fiscal Impact and Paperwork Requirements*

The standards are necessary to ensure that the approved private schools and the chartered schools for deaf or blind children continue to receive predictable funding and to reform the audit structure, thereby enhancing each school's ability to focus on students and programs. The standards will neither increase costs to the schools, nor to the Commonwealth. These standards do not impose additional paperwork requirements.

#### *Affected Parties*

The standards affect the approved private schools and the chartered schools for deaf or blind children in this Commonwealth.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 24, 2008, 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 House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the 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 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.

#### *Effective Date*

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

#### *Sunset Date*

The Department will review the effectiveness of Chapter 171 after 5 years. Thus, no sunset date is necessary.

#### *Public Comments and Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Richard E. Brown, Director's Office, Bureau of Special Education, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-6906 within 30 days following publication in the *Pennsylvania Bulletin*.

GERALD L. ZAHORCHAK, D.Ed.,  
*Secretary*

(*Editor's Note:* Sections 171.203—171.205 are not proposed to be amended.)

**Fiscal Note:** 6-305. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 22. EDUCATION

#### PART XII. BASIC EDUCATION

#### CHAPTER 171. STANDARDS FOR APPROVED PRIVATE SCHOOLS

#### Subchapter C. [ INTERIM ] AUDIT STANDARDS

#### § 171.201. Purpose and applicability.

[ (a) ] The purpose of these audit standards is to ensure that revenues provided by the Commonwealth for students whose placement in the approved private school has been approved by the Department have been spent on the provision of education services, including residential services in some cases, to children who are residents of this Commonwealth and who have been approved by the Department under § 171.16 (relating to assignment).

[ (b) These interim standards apply to audits conducted after July 1, 2005, and will apply until final standards are promulgated. ]

#### § 171.202. General guidelines.

An approved private school shall maintain an accounting and bookkeeping system in accordance with the following standards:

\* \* \* \* \*

**(9) Reports of the independent auditors will be limited to the Approved Private School Program.**  
**§ 171.206. Administrative costs.**

\* \* \* \* \*

(b) Costs or expenses related to the following functions are considered as administrative and are subject to the 10% administrative cap except when and to the extent that the costs or expenditures are incurred as a result of providing educational services to children who are residents of this Commonwealth and who have been approved by the Department through [ **the PDE-4010 process** ] **Application for Educational Assignment to Approved Private School**. To the extent that the following costs are for educational services, they are not subject to the administrative cap and are reported in the schedule of operating expenses:

\* \* \* \* \*

**§ 171.207. Payments in excess of expenditures.**

[ (a) If the amount of reportable costs in 2004-05 is less than the amount of revenues received by the schools for 2004-05 from the Commonwealth for the provision of educational services to children who have been approved through the PDE-4010 process, the difference may be retained by the school for use in 2005-06.

(b) **Beginning in 2005-06, if** If the amount of reportable costs in a year is less than the amount of revenues received in that year by the school from the Commonwealth for the provision of educational services to children who have been approved through [ **the PDE-4010 process** ] **Application for Educational Assignment to Approved Private School**, the difference will be remitted to the Commonwealth **by December 1 of each year**. Those funds shall be deposited in the Audit Resolution Fund for the resolution of previous audits.

[Pa.B. Doc. No. 08-827. Filed for public inspection May 2, 2008, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD**

[ 58 PA. CODE CH. 401a ]  
**Licensed Facility**

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) proposes to amend Chapter 401a to read as set forth in Annex A.

*Purpose of the Proposed Rulemaking*

This proposed rulemaking is intended to provide additional clarification as to how the Board interprets the term “licensed facility.”

*Explanation of Amendment to Chapters 401a*

Currently, the Board’s regulations use the definition of “licensed facility” that is contained in 4 Pa.C.S. § 1103 (relating to definitions).

However, a number of questions have arisen as to how the term should be interpreted. For example, 4 Pa.C.S. § 1305(b) (relating to Category 3 slot machine license) requires that no Category 3 license shall be located within 15 linear miles of another licensed facility. Questions have been raised as to whether the 15 linear miles should be measured from the property line of the licensed facility or the building that houses the gaming floor.

To provide greater clarity to applicants for and holders of slot machine licenses, the Board, through this proposed rulemaking, is expanding the definition of “licensed facility” to clarify that it includes the gaming floor, all restricted areas servicing the slot operations, all adjacent and proximate amenities, such as food, beverage and retail outlets and other areas directly accessible from the gaming floor or restricted areas. The term does not include areas that are exclusively devoted to pari-mutuel activities, hotel activities or other amenities not related to the slot machine gaming operations.

*Affected Parties*

Holders of and applicants for a slot machine license may be affected by this proposed rulemaking.

There are currently 11 slot machine licensees and 4 applicants for slot machine licenses.

*Fiscal Impact*

*Commonwealth*

The Board anticipates that this proposed rulemaking will have no fiscal impact on the Board or other agencies of this Commonwealth.

*Political Subdivisions*

Under 4 Pa.C.S. § 1403 (relating to establishment of State Gaming Fund and net slot machine revenue distribution), the distribution of funds from the local share assessment is based upon the location of the licensed facility. For slot machine licensees that have facilities in more than one county or municipality this proposed rulemaking could have a fiscal impact on those political subdivisions.

*Private Sector*

To the extent that this proposed rulemaking clarifies the definition of the term “licensed facility” there may be some small potential savings to applicants or potential applicants for a slot machine license.

*General Public*

This proposed rulemaking will have no fiscal impact on the general public.

*Paperwork Requirements*

This proposed rulemaking will create no new paperwork requirements.

*Effective Date*

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

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary,

Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-85.

[ 58 PA. CODE CHS. 405a, 421a, 433a AND 435a ]  
Releases

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 21, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (Commission) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the act, the Commission 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 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.

MARY DIGIACOMO COLINS,  
Chairperson

**Fiscal Note:** 125-85. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

\* \* \* \* \*

Licensed facility—

(i) The physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines **including the gaming floor and all restricted areas servicing slot operations together with all adjacent and proximate amenities, including, but not limited to, food, beverage and retail outlets and other areas directly accessible from the gaming floor or the restricted areas servicing slot operations.**

(ii) **The term does not encompass areas or amenities exclusive to pari-mutuel activities, hotel activities and other amenities and activities not related to slot machine gaming operations.**

\* \* \* \* \*

[Pa.B. Doc. No. 08-828. Filed for public inspection May 2, 2008, 9:00 a.m.]

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1311, 1311.1, 1311.2, 1317, 1317.1, 1318 and 1517, proposes to amend Chapters 405a, 421a, 433a and 435a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking is intended to implement the requirement that applicants for a principal or key employee license execute releases that will enable the Board to receive information under a request for information under the act of June 21, 1957 (P. L. 390, No. 212) known as the Right-to-Know Law (65 P. S. §§ 66.1—66.4) and the Freedom of Information Act (5 U.S.C. § 552). It will also clarify that the Bureau of Investigations and Enforcement (Bureau) may request applicants for permits, certifications or registrations to also execute these releases.

Explanation of Amendments to Chapters 405a, 421a, 433a and 435a

Currently, as part of the application process, applicants for principal or key employee licenses are required to execute a number of releases that allow the Board to conduct an investigation of the applicant. These releases include items such as tax information from the Departments of Revenue and Labor and Industry, military records and information from past employers.

This proposed rulemaking amends the general language related to releases in Chapter 421a (relating to general provisions) to clarify that it includes releases that will enable the Board to receive information under a request for information under the Right-to-Know Law or the Freedom of Information Act in addition to the other releases required in the application.

The amendments to Chapters 433a and 435a (relating to principal licenses; and employees) specifically require applicants for principal or key employee licenses to execute releases that will enable the Board to receive information under a request for information under the Right-to-Know Law or the Freedom of Information Act in addition to the other releases required in the application.

The amendments to Chapter 405a (relating to Bureau of Investigations and Enforcement) are intended to clarify that the Bureau may require applicants for permits, certification or registration to also execute a release that will enable the Bureau and Board to receive information under a request for information under the Right-to-Know Law or the Freedom of Information Act. The decision to require an applicant for a permit, certification or registration to execute a release will be made on a case by case basis depending on the nature of the job the applicant will be performing and results of the review of the other information provided in the individual's application.

Affected Parties

Applicants for a principal or key employee license will be required to execute releases that will enable the Board to receive information under a request for information under the Right-to-Know Law or the Freedom of Information Act. The Board receives approximately 700 to 800 principal and key employee applications annually.

*Fiscal Impact  
Commonwealth*

Applicants are responsible for paying the costs associated with the review of their applications. Therefore, these amendments will have no fiscal impact on the Board or other agencies of the Commonwealth.

*Political Subdivisions*

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

*Private Sector*

Applicants who are required to execute these releases will be responsible for reimbursing the Board for any costs associated with the filing of the requests for information and time spent reviewing the information that is received.

*General Public*

This proposed rulemaking will have no fiscal impact on the general public.

*Paperwork requirements*

The Board is in the process of amending its existing applications to include the releases related to requests for information under the Right-to-Know Law or the Freedom of Information Act. These releases are not lengthy and should only take a few minutes for an applicant to complete.

*Effective Date*

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

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-84.

*Contact Person*

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 21, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (Commission) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the act, the Commission 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 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.

MARY DIGIACOMO COLINS,  
*Chairperson*

**Fiscal Note:** 125-84. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 405a. BUREAU OF INVESTIGATIONS  
AND ENFORCEMENT**

**§ 405a.2. Information.**

(a) An applicant for or holder of a license, permit, certification or registration shall provide all information, data and documents requested by the Bureau under section 1517(a) of the act (relating to enforcement). **The Bureau may also request the execution of any releases which would enable the Bureau and the Board to receive information pursuant to a request for information under the act of June 21, 1957 (P. L. 390, No. 212) known as the Right-to-Know Law (65 P. S. §§ 66.1—66.4) or the Freedom of Information Act (5 U.S.C. § 552).**

\* \* \* \* \*

**Subpart B. LICENSING, REGISTERING,  
CERTIFYING AND PERMITTING**

**CHAPTER 421a. GENERAL PROVISIONS**

**§ 421a.1. General requirements.**

\* \* \* \* \*

(c) By filing an application for a license, permit, certification or registration issuance, renewal or other approval from the Board, an applicant agrees to:

\* \* \* \* \*

(3) Execute all releases requested by the Board, **including releases whereby the applicant consents to the release of information requested by an individual under the act of June 21, 1957 (P. L. 390, No. 212) known as the Right-to-Know Law (65 P. S. §§ 66.1—66.4) or the Freedom of Information Act (5 U.S.C. § 552).**

\* \* \* \* \*

**CHAPTER 433a. PRINCIPAL LICENSES**

**§ 433a.8. Principal applications.**

(a) An individual required to be licensed as a principal, **unless otherwise directed by the Board, shall file: [ a completed Multi Jurisdictional Personal History Disclosure Form and the Pennsylvania Supplement to the Multi-Jurisdictional Personal History Disclosure Form and submit the applicable application fee posted on the Board's website (www.pgcb.state.pa.us). ]**

**(1) An original and three copies of a completed Multi-Jurisdictional Personal History Disclosure Form.**

**(2) An original and three copies of a completed Principal/Key Employee Form—Pennsylvania Supplement to the Multi-Jurisdictional Personal History Disclosure Form.**

**(3) Executed releases requested by the Board, including releases whereby the applicant consents to the release of information requested by an individual under the Right-to-Know Law or the Freedom of Information Act.**

**(4) The nonrefundable application fee posted on the Board's web site (www.pgcb.state.pa.us).**

\* \* \* \* \*

**CHAPTER 435a. EMPLOYEES****§ 435a.2. Key employee license.**

(a) An applicant for a key employee license from the Board, **unless otherwise directed by the Board**, shall submit:

(1) An original and three copies of **[ the ] a completed [ Multi-jurisdictional ] Multi-Jurisdictional Personal History Disclosure Form [ and the ]**.

(2) **An original and three copies of a completed Principal/Key Employee Form—Pennsylvania Supplement to the [ Multi-jurisdictional ] Multi-Jurisdictional Personal History Disclosure Form [ unless otherwise directed by the Board ]**.

(3) **Executed releases requested by the Board, including releases whereby the applicant consents to the release of information requested by an individual under the act of June 21, 1957 (P. L. 390, No. 212) known as the Right-to-Know Law (65 P. S. §§ 66.1—66.4) or the Freedom of Information Act (5 U.S.C. § 552).**

(4) The nonrefundable application fee posted on the Board's **[ website ] web site** (pgcb.state.pa.us).

\* \* \* \* \*

[Pa.B. Doc. No. 08-829. Filed for public inspection May 2, 2008, 9:00 a.m.]

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 63 ]

[ L-2008-2020165/57-261 ]

## Telecommunications Relay Service System and Relay Service Fund

The Pennsylvania Public Utility Commission (Commission) on January 24, 2008, adopted a proposed rulemaking order which ensures adequate Telecommunications Relay Service (TRS) fund balances, timely remittance of TRS fund revenues and cooperation with TRS fund audits.

### *Executive Summary*

On January 25, 2008, at Docket No. L-2008-2020165, the Commission entered a proposed rulemaking order soliciting comments on changing, clarifying and codifying provisions of the existing Policy Statement in 52 Pa. Code §§ 69.511—69.513 relating to the operation of the TRS System and the Relay Service Fund. Interested persons will be provided with 30 days from the date the order is published in the *Pennsylvania Bulletin* to submit comments regarding the proposed regulation.

The Commission is proposing to codify existing reporting and remitting obligations of the wireline carriers, which have been the operative norm for a number of years, under both the Commission's 1990 orders at M-00900239 and the existing Policy Statement. Voluntary compliance with the policy statement has been spotty, leading to extended collection efforts, estimated surcharges, and inequitable allocations of the costs of the funded programs. The proposed regulation will not create any significant new burdens on affected wireline carriers. The reporting and remitting forms will stay the same, but

the filing dates and filing destinations would change. The Annual Access Line Summary Report (number of lines in service as of a particular day) would be due 2 months earlier than under the existing Policy Statement. The Annual Tracking Report (list of monthly remittances for a prior 12-month period) would be due 1 month earlier than under the existing Policy Statement. Both forms would be filed with the Commission's Secretary's Bureau.

The Commission views the proposed regulation as a tool to ensure timely, accurate and equitable funding of the programs mandated by the Universal Telecommunications and Print Media Access Act (35 P. S. §§ 6701.1—6701.4).

Public Meeting held  
January 24, 2008

*Commissioners Present:* Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Tyrone J. Christy; Kim Pizzingrilli, Statement follows

*Proposed Rulemaking to Amend 52 Pa. Code Chapter 63 (relating to Telephone Service) re Operation of Telecommunications Relay Service System and Relay Service Fund; Doc. No. L-2008-2020165*

### **Proposed Rulemaking Order**

*By the Commission:*

The Commission's Policy Statement in 52 Pa. Code §§ 69.511—69.513 became effective after publication at 29 Pa.B. 2034 (April 17, 1999). The Policy Statement establishes parameters for collecting information necessary to manage the TRS fund. We propose herein a rulemaking to codify provisions of the Policy Statement so as to ensure adequate TRS fund balances, timely remittance of TRS fund revenues, and cooperation with TRS fund audits. Comments on this Proposed Rulemaking may be filed on or before 30 days after the date of publication of this Order in the *Pennsylvania Bulletin*. Reply comments will not be accepted.

Specifically, we propose to: (1) move the due date for the filing of the annual access line summary report from April 30 to March 1; (2) move the due date for the filing of the annual tracking report from April 30 to March 31 and adjust the reporting year from April-through-March to March-through-February; (3) direct that both reports be filed with the Commission's Secretary's Bureau; and (4) establish enforcement procedures for inaccurate, late, or missing TRS reports and for inaccurate, late, or missing TRS fund payments. Upon completion of the rulemaking, we shall rescind the Policy Statement.

### **Background**

On May 24, 1990, at Docket No. M-00900239, the Commission approved the implementation of the Pennsylvania TRS<sup>1</sup> and established a funding mechanism. The TRS assists people with hearing and/or speech disabilities to use the telephone and seeks to ensure equivalent access to telecommunications services. In 1996, the Telecommunications Device Distribution Program (TDDP) was implemented to provide assistive customer premises equipment based upon income-level criteria. In 2005, the Print Media Access System Program (PMASP) was added to provide newspaper reading services for persons who are blind. These three programs are now collectively codified at the Universal Telecommunications and Print Media Access Act.

Costs associated with the intrastate operations of the three programs are recovered from residential and business wireline access line end-users by a monthly sur-

<sup>1</sup>See [http://www.puc.state.pa.us/telecom/telecom\\_relay\\_service.aspx](http://www.puc.state.pa.us/telecom/telecom_relay_service.aspx) for complete information on TRS. The traditional TRS program is also known as PA Relay.

charge (TRS Surcharge) on local service telephone bills. The TRS Surcharge is recalculated annually and adjusted as necessary, effective July 1, based upon projected costs of the various programs and the number of wireline access lines in service as of December 31 of the preceding year. LECs remit the TRS Surcharge collection revenues monthly to the TRS Fund Administrator. See annual orders at TRS, Docket No. M-00900239.

In 1999, to ensure the successful operation of the TRS fund, the Commission, at Docket No. M-00900239, adopted the existing Policy Statement. The intent of the Policy Statement was to address the difficulties that the Commission was experiencing in collecting the surcharge revenues and to foster cooperation from the LECs in submitting the documentation required to conduct annual audits of the TRS fund.

The existing Policy Statement provides that LECs "file" their annual access line summary reports<sup>2</sup> with the Bureau of Fixed Utility Services (FUS) by April 30. The Commission uses the annual summary line count information to establish adjustments to the TRS Surcharge by June 1, and the LECs implement any required changes by July 1. The existing Policy Statement also provides that the LECs "file" their annual tracking reports with FUS by April 30, tallying the monthly collected TRS surcharge revenues. The tracking reports cover a 12-month period from April to March. The tracking information is used by the Commission to reconcile the TRS Fund. 52 Pa. Code §§ 69.511—69.513.<sup>3</sup>

<sup>2</sup>The Annual Access Line Summary Report and the Annual Tracking Report forms may be downloaded from the Commission's web site at: <http://www.puc.state.pa.us/general/onlineforms.aspx#Telecommunications%20Forms>.

<sup>3</sup>The Policy Statement may be found online at <http://www.pacode.com/secure/data/052/chapter69/s69.511.html>; <http://www.pacode.com/secure/data/052/chapter69/s69.512.html>, and <http://www.pacode.com/secure/data/052/chapter69/s69.513.html>. It provides as follows:

**§ 69.511. General.**

(a) On May 24, 1990, at Docket M-900239, entitled "Pennsylvania Telecommunications Relay Services," the Commission granted approval of the implementation of the Pennsylvania Telecommunications Relay Service (TRS) for people with hearing or speech, or both, disabilities. A Relay Service Fund (Fund) was established to recover charges associated with the operation of the TRS. The Commission established a mechanism to adequately compensate the Fund through a monthly end-user billing surcharge, based on access lines, collected by Pennsylvania's Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs). These revenues are to be remitted on a monthly basis.

(b) To effectively monitor and evaluate the revenue data, the Commission established a tracking schedule for the filing of tracking reports. All ILECs and CLECs are required to file an Annual Tracking Report and an Annual Access Line Summary Report by April 30th. These reports require that the ILECs and CLECs break out the requisite data consistent with the current report forms. Further, the Annual Tracking Report requires that the data be broken out on a monthly basis beginning with April of the previous year and ending with March of the current year. The surcharge revenue collections data for each month includes the actual surcharge revenues collected from a company's end-users that month and remitted to the Fund by the 20th of the following month. The Commission directed the Bureau of Audits to conduct an annual audit of the TRS in its order dated September 3, 1992.

**§ 69.512. Timely remittance of revenues.**

(a) Under existing Commission Orders, Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) which collect revenues owed to the Relay Service Fund (Fund) are to remit these revenues to the Fund by the 20th of each month for revenues collected during the prior month. Delays in remitting revenues to the Fund result in lost earnings. The Commission intends to ensure that the Fund is properly funded through a reimbursement by the companies which fail to timely remit revenues.

(b) To properly reimburse the Fund, each company which is late in remitting surcharge revenues will be required to calculate for lost earnings based upon the base rate on corporate loans posted by at least 75% of the Nation's 30 largest banks, also known as the "prime rate," beginning at the date of the occurrence of the error and continue until the revenues are properly remitted to the Fund.

**§ 69.513. Filing of Telecommunications Relay Service (TRS) reports.**

(a) *Annual tracking report.* Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) are currently required to submit an Annual Tracking Report to the Bureau of Fixed Utility Services by April 30th which delineates the monthly revenues collected based upon the number of each company's access lines. A company's failure to submit its Annual Tracking Report by April 30th impairs the Bureau of Audits' ability to complete the required annual audit of the Fund. The Annual Tracking Reports effectively include revenues actually collected during the prior 12-month period. The timely filing of the tracking reports is essential to avoid underfunding the Relay Service Fund (Fund) by the surcharge revenue and related investment income which the revenues would have earned.

(b) *Annual Access Line Summary Report.* ILECs and CLECs are currently required to submit an Annual Access Line Summary Report to the Bureau of Fixed Utility Services by April 30th detailing each company's access line count. A company's failure to submit its Annual Access Line Summary Report or to correctly report its access line information, impairs the ability of the Bureau of Fixed Utility Services to establish the proper TRS surcharge rates. The receipt of a timely and correct Annual Access Line

Under 66 Pa.C.S. §§ 3015(e)(3) and (6), the Commission is expressly authorized to require the submission of annual access line summary reports and annual tracking reports.

**Discussion**

Our Policy Statement specifying filing dates, payment obligations, and enforcement procedures has been in effect since 1999. At this time, we propose to codify portions of its provisions in our regulations in 52 Pa. Code § 63.37. Promulgating parameters for the annual reporting and monthly payments in our regulations will ensure that all LECs are held to the same standards for compliance and ensure that the binding norms are properly imposed in compliance with the Regulatory Review Act (71 P. S. §§ 745.1—745.14).

The purpose for the Policy Statement was to ensure accurate TRS Surcharge calculations, accurate and timely remittance of TRS Surcharge revenues, and cooperation with audit procedures. These goals remain equally valid today for the proposed rulemaking. The Bureau of Audits (Audits) uses the tracking report data to conduct periodic audits of the TRS fund. A LEC's failure to submit its annual tracking report on a timely and accurate basis impairs Audits' ability to complete the required audits of the Fund. Timely and accurate remittance of the TRS revenues and timely and accurate filing of the tracking reports are essential to properly capitalize the Fund by the surcharge revenue and the related investment income that the revenues would have earned.

Similarly, FUS uses the access line counts to calculate the next years' TRS surcharge. A LEC's failure to timely submit its annual access line summary report or to accurately report its access line information impairs FUS' ability to calculate the proper TRS surcharge rates. Receipt of a timely and accurate annual access line summary report is essential to avoid underfunding (or overfunding) the TRS Fund.

Rather than use the exact language of the existing Policy Statement, however, we are proposing to streamline and clarify the language. We also propose to adjust time lines and to provide that the requisite reports be filed with the Secretary's Bureau rather than with FUS.

Sections 69.511(b) and 69.513(b) of the existing Policy Statement provide that LECs submit their annual access line summary report by April 30. This would change to March 1 under the proposed regulations. With the increase in the number of LECs and the additional funded programs since 1990, the window between April 30 when line count reports are submitted under the Policy Statement and July 1 when the new TRS Surcharge takes effect is insufficient. To establish the monthly surcharge for each year, the Commission has only 1 month to receive the reports of annual access line counts from individual LECs, track down missing reports, factor in the cost estimates of the three programs and ancillary costs, and approve and publish the new surcharge. The new surcharge is published by June 1 so as to give the LECs time to file tariff changes and process billing system adjustments in order to implement the new surcharge by July 1. Missing reports require Staff to estimate line counts. Estimated or inaccurate line counts can skew the TRS surcharge and result in over or under

Summary Report is essential to avoid underfunding the TRS Fund.

(c) An ILEC or CLEC which fails to timely remit an Annual Tracking Report may need to reimburse the Fund under § 69.512 (relating to timely remittance of revenues). The Commission may also utilize all available remedies to ensure reporting and remittance compliance including fines and the revocation of Certificates of Public Convenience.

collections in the TRS fund. Moving the due date for the annual access line summary reports to March 1 will ensure greater precision in setting the TRS surcharge each year. We do not propose to change the date to count the lines in service. We believe that the time period between January 2 and February 28 should be sufficient to count and report access lines in service.

Sections 69.511(b) and 69.513(a) of the existing Policy Statement provide that LECs submit their annual tracking reports by April 30. This would change to March 31 under the proposed regulation. This earlier date will allow better tracking of the filing compliance by the LECs. The months covered by the tracking report would shift from April-through-March to March-through-February for the preceding year.

Under the Policy Statement, LECs file their access line count and tracking reports with FUS. Under the proposed regulations, the LECs would file their annual access line summary reports and their annual tracking reports directly with the Commission's Secretary's Bureau rather than with FUS. This change is appropriate because the Secretary's Bureau is the official recipient of all matters to be filed with the Commission. See 52 Pa. Code § 1.4.

Finally, we propose to clarify the language relating to enforcement matters. The Policy Statement provides, *inter alia*, that a LEC that fails to remit timely tracking data may need to reimburse the Fund for lost earnings and is subject to all available remedies to ensure reporting and remittance compliance including fines and the revocation of Certificates of Public Convenience. The proposed regulation addresses failures to submit the line count reports, the tracking reports, or the payments in an accurate and timely manner. Under the proposed regulations, LECs that fail to timely and accurately submit a tracking report or an access line summary report or that fail to timely and accurately remit TRS surcharge revenues will be subject to reimbursement obligations. The Commission will utilize all available remedies to ensure accurate and timely reporting and remittance compliance, including interest on late payments, fines, and the revocation of certificates of public convenience.

Interested parties shall have 30 days to comment on the proposed regulations, which are attached in Annex A. Reply comments will not be accepted.

### Conclusion

Accordingly, under 66 Pa.C.S. §§ 501, 1501, 3015 and 3019; sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the associated regulations in 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 745.5); section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the associated regulations in 4 Pa. Code §§ 7.231, 7.232, 7.233 and 7.234, we are considering adoption of the proposed regulation in Chapter 63 to our regulation in telephone service as set forth in Annex A; *Therefore*,

*It Is Ordered that:*

1. This docket be opened to consider the proposed regulation set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comment to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. An original and 15 copies of any comments referencing the docket number of the proposed regulation be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. In addition, one copy in electronic format (Microsoft Office Word® 2003 or readable equivalent) on diskette shall be provided to the Secretary. Additionally, electronic copies of the filings should be emailed to Louise Fink Smith, Esq., Law Bureau at [finksmith@state.pa.us](mailto:finksmith@state.pa.us) and to Anthony J. Rametta, Fixed Utility Services at [arametta@state.pa.us](mailto:arametta@state.pa.us). No reply comments are permitted.

6. The contact persons for this rulemaking are Anthony Rametta, Bureau of Fixed Utility Services, (717) 787-2359 (technical), and Louise Fink Smith, Assistant Counsel, Law Bureau, (717) 787-8866 (legal). 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.

7. A copy of this order and Annex A shall be served upon the Pennsylvania Telephone Association, all jurisdictional local telecommunications utilities in this Commonwealth, the Office of Trial Staff, the Office of Consumer Advocate, the Office of the Small Business Advocate and the Telecommunications Relay Service Advisory Board and posted on the Commission's web site.

8. A copy of this order be filed at Docket No. M-00900239.

JAMES J. MCNULTY,  
*Secretary*

*(Editor's Note: It is the intent of the Commission to rescind the statement of policy in §§ 69.511—69.513 upon final adoption of this proposed rulemaking.)*

**Fiscal Note:** 57-261. No fiscal impact; (8) recommends adoption.

### STATEMENT OF COMMISSIONER KIM PIZZINGRILLI

Today the Commission initiates a rulemaking to codify our current policy statement governing the filing and reporting requirements related to the Commission's monitoring of the Telecommunication Relay Service (TRS) program. See 52 Pa. Code §§ 69.511—69.513. The Policy Statement requires that local exchange carriers file an annual access line count summary and tracking report with the Commission. The information contained in these reports is used by the Commission to calculate the annual TRS Surcharge Adjustment and audit the TRS program.

I fully support the codification of the Policy Statement and believe that promulgating regulations will promote a greater level of compliance with the reporting requirements set forth in the Policy Statement and enhance the ability of the Commission to enforce these requirements.

I also support moving the access line count summary reporting date from April 30 to March 1 of each year. The earlier reporting date affords Commission Staff much needed time to collect line count information and ensure a timely and accurate calculation of the TRS surcharge.

However, I question whether the need exists, at this time, to adjust the reporting period and filing deadline for the annual tracking report from April 30 to March 31. This report is used by the Commission to audit the TRS program. A change to the filing date of the access line report does not necessarily support a change to the tracking report filing deadline.

Despite my reservation regarding the change proposed to the tracking report deadline, I support the initiation of this rulemaking and look forward to reviewing the comments of the parties. In light of this proposed rulemaking, it may be prudent for the Commission to begin a comprehensive review of the reporting deadlines for each of the reports required by the Commission and evaluate whether consistency can be established for reporting deadlines rather than the current varying due dates.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITIY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 63. TELEPHONE SERVICE**

**Subchapter C. ACCOUNTS AND RECORDS**

**§ 63.37. Operation of the Telecommunications Relay Service System and Relay Service Fund.**

(a) *General.*

(1) The Pennsylvania Telecommunications Relay Service (TRS), the Telecommunications Devices for the Deaf Program, and the Print Media Access System Program are codified in the Universal Telecommunications and Print Media Access Act (35 P. S. §§ 6701.1—6701.4). The Relay Service Fund (Fund) covers eligible intraState costs associated with the operation of the three programs. The costs are recovered from residential and business wireline access line end-users by a monthly surcharge on local service telephone bills.

(2) To permit the Commission to effectively monitor and evaluate the revenue and cost data associated with the Fund, each local exchange carrier (LEC) shall file an annual tracking report delineating monthly revenues collected and remittances for late payments for the preceding 12-month year and an annual access line summary report detailing its access line count as of December 31 of the preceding year. The tracking data are used for periodic audits of the Fund. The access line counts are used to calculate the next year's TRS surcharge.

(b) *Timely remittance of revenues.*

(1) LECs shall remit the TRS surcharge revenues to the Fund Administrator by the 20th of each month for revenues collected during the prior month.

(2) Delays or inaccuracies in remitting revenues to the Fund result in lost earnings by the Fund. An LEC that is late in remitting surcharge revenues shall remit an additional contribution to the Fund to make up for lost Fund earnings. The additional contribution must be based upon the published prime rate in effect at the time of the missed due date and cover the period beginning at the date of the occurrence of the failure to remit and continue until the surcharge revenues are properly remitted to the Fund.

(c) *Filing of TRS reports.*

(1) *Annual tracking report.* An LEC shall submit its annual tracking report to the Secretary's Bureau by

March 31 of each year, in the format and detail specified on the Commission's web site ([www.puc.state.pa.us](http://www.puc.state.pa.us)).

(2) *Annual access line summary report.* An LEC shall submit its annual access line summary report to the Secretary's Bureau by March 1 of each year, in the format and detail specified on the Commission's web site.

(d) *Failure to remit TRS revenues or to file TRS reports.* An LEC that fails to timely and accurately submit a tracking report or an access line summary report or that fails to timely and accurately submit TRS surcharge revenues may need to reimburse the Fund under subsection (b). The Commission will utilize all available remedies to ensure reporting and remittance compliance including fines and the revocation of Certificates of Public Convenience.

[Pa.B. Doc. No. 08-830. Filed for public inspection May 2, 2008, 9:00 a.m.]

**STATE BOARD OF MEDICINE**

**[ 49 PA. CODE CH. 18 ]**

**Acupuncture Registration**

The State Board of Medicine (Board) proposes to amend § 18.15 (relating to practice responsibilities of acupuncturist who is not a medical doctor), to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The act of November 29, 2006 (P. L. 1625, No. 186) (Act 186) amended the Acupuncture Registration Act (act) (63 P. S. §§ 1801—1806) to authorize an acupuncturist or practitioner of Oriental medicine (hereinafter referred to collectively as acupuncturists) to treat a patient's condition through acupuncture or by dispensing or administering medicinal herbs for up to 60 days without the patient's condition first being diagnosed by a physician, dentist or podiatrist. See 63 P. S. § 1803.1. In addition, section 21 of the Medical Practice Act of 1985 (63 P. S. § 422.21), provides for the various levels of required medical doctor involvement with the care of patients who are being treated by nonphysicians.

C. *Background and Purpose*

This proposed rulemaking seeks to amend the Board's existing regulations to implement the 60-day direct access provision of Act 186 and provide for patient safety by establishing protocols for a cooperative relationship between the patient's acupuncturist and the patient's treating physician, as applicable.

Act 186 contains two substantive provisions regarding the practice of acupuncture:

1. It gives acupuncturists the authority to treat patients for 60 days without any physician involvement.

2. It deletes from the act the statutory requirement that a patient obtain a referral or prescription for acupuncture services and substitutes a requirement for a medical examination and diagnosis if treatment will continue beyond 60 days.



The 60-day access provision is self-executing. However, the provision dealing with physician involvement keeps open the question as to what responsibilities the physician still has under the Medical Practice Act regarding to the needs of the patient if the patient has contraindications for acupuncture or herbal treatments. Similarly, the act does not provide for the acupuncturists responsibilities to their patient when it is apparent that despite acupuncture treatment the patient's condition is worsening. Accordingly, it is appropriate for the Board to establish regulations to address the question as to the professionals' obligation to safeguard the well being of their joint patients.

#### D. *Description of Amendments*

The rulemaking proposes to amend § 18.15 to comport with Act 186 to authorize an acupuncturist or practitioner of Oriental medicine to treat a patient's condition for up to 60 days without the condition first being diagnosed by a physician, dentist or podiatrist. The rulemaking also proposes to amend § 18.15 to provide for the responsibilities of the acupuncturist regarding the coordination of patient care with the patient's physician, dentist or podiatrist.

Section 18.15 would be amended throughout to add "practitioners of Oriental medicine" consistent with the Board's prior final rulemaking published at 37 Pa.B. 1644 (April 14, 2007).

Subsection (a)(1) would require acupuncturists to perform an evaluation of the patient and develop an acupuncture or Oriental medicine treatment plan.

Subsection (a)(2) would provide for the acupuncturist to treat patients for 60 calendar days without the patient's condition being first diagnosed by a physician, dentist or podiatrist.

Subsection (a)(3) would permit continued acupuncture or Oriental medicine treatment beyond 60 calendar days if the patient obtains an examination and diagnosis from a physician, dentist or podiatrist.

Subsection (a)(4) would require acupuncturists to refer a patient within the 60 calendar days to a physician, dentist or podiatrist, as appropriate to the patient's condition, if acupuncture or Oriental medicine treatment is contraindicated for the patient or if the patient's condition worsens.

Subsection (a)(4) would require the acupuncturist to consult with the patient's physician, dentist, podiatrist or other health care practitioner at the patient's request.

Subsection (a)(5) would require the acupuncturist to cooperate with the patient's physician, dentist or podiatrist regarding the coordination of the patient's care, and to comply with restrictions or conditions as directed by the patient's physician, dentist or podiatrist.

Subsection (a)(6) would prohibit acupuncturists from diagnosing a physical or mental ailment or condition or prescribing or dispensing a drug. The subsection would allow practitioners of Oriental medicine to dispense and administer therapeutic herbs that contain ingredients that are similar or equivalent to active ingredients in drugs as classified by the Food and Drug Administration.

The subsection would also permit the use of diagnostic billing codes used for payment and reimbursement.

Subsection (a)(7) would require compliance with sterilization standards relative to aseptic practices.

Subsection (a)(8) would require that patient records be maintained in a manner consistent with the Board's recordkeeping regulation in § 16.95 (relating to medical records).

Subsection (b) would be amended to delete outdated provisions pertaining to supervision of acupuncturists. The requirement that acupuncturists identify themselves as such is retained.

#### E. *Compliance*

The Board met with representatives of the Pennsylvania Association for Professional Acupuncture (Association). The comments from the Association were primarily technical in nature and were incorporated into this proposed rulemaking. The Association also commented on the language requiring referral if the patient's condition worsens. The Association's comments expressed concern that the patient's perception of his condition may not be accurate from clinical perspective. In recognition that the initial determination of the progress and appropriateness of treatment is a professional one, the Board has made it clear to the Association that it is the acupuncturist who is responsible for making that determination.

The law firm of Kalegredis, Sansweet, Dearden and Burke, LTD, submitted written comments. The comments asserted that requiring the acupuncturist to refer patients to other health care practitioners was problematic because such a requirement was not contemplated by Act 186 and because "worsening" of the patient's condition was subjective and undefined. The Board disagrees. Act 186 does not preclude the Board from adopting regulations giving effect to other related provisions of law, including section 21 of the Medical Practice Act of 1985, which provides for necessary medical doctor involvement with health care being administered by persons other than medical doctors. Moreover, one need only examine the warning labels of over-the-counter medications to appreciate that the term "worsens" is a commonly understood concept by patients as well as health care practitioners. Indeed, during Board meetings at which the proposal was being discussed, when asked by the Board how an acupuncturist knows when the acupuncture treatment being provided is contraindicated, the acupuncturist representatives of the Pennsylvania Association for Professional Acupuncture stated that the patient gets "worse." Lastly, this provision is consistent with existing § 18.15(b)(1), which this proposal would merely relocate to § 18.15(a).

Kalegredis, Sansweet, Dearden and Burke, LTD, also recommended that the Board allow for the use of diagnostic billing codes in § 18.15(a)(6). The Board agrees that this is a helpful clarification and has incorporated it into this proposed rulemaking. Kalegredis, Sansweet, Dearden and Burke, LTD, also recommended that the rulemaking clarify that practitioners of Oriental medicine may use other supplemental techniques. The Board does not believe this is necessary because under the Board's regulations all practitioners of Oriental medicine are acupuncturists, with the additional authority of being authorized

to provide Chinese herbal therapy. Accordingly, practitioners of Oriental medicine may use all the modalities that acupuncturists are authorized to use without further revision to the regulations.

Kalegredis, Sansweet, Dearden and Burke, LTD, also suggested that requiring acupuncturists to maintain records in a manner consistent with the Board's regulations in § 16.95 is inappropriate because that section refers to physicians. The Board believes the comment misapprehends that the use of the phrase "consistent with" qualifies the reference to § 16.95. The Board has not incorporated § 16.95 by reference, but rather requires the acupuncturist to maintain those records developed during the acupuncturist-patient relationship in a manner so that the records are accurate, legible, complete and accessible to patients. The Board believes it unnecessary to recreate these requirements for each Board-regulated practitioner. The Board has plans for future rulemaking that will amend and make more generic certain regulations that are of common application to all Board-regulated practitioners. This rulemaking is consistent with that plan.

#### F. Fiscal Impact and Paperwork Requirements

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivision or the private sector.

#### G. Sunset Date

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

#### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 21, 2008, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

#### I. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Gerald S. Smith, Senior Counsel in Charge, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication for the proposed regulation in the *Pennsylvania Bulletin*. Refer to 16A-4924: Acupuncture when submitting comments.

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

**Fiscal Note:** 16A-4924. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

### PART I. DEPARTMENT OF STATE

#### CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

##### Subchapter B. REGISTRATION AND PRACTICE OF ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE

§ 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who [ is ] are not [ a ] medical [ doctor ] doctors.

(a) *Responsibilities to patient.* In relation to the acupuncture patient, the acupuncturist [ shall comply with the following ] and the practitioner of Oriental medicine:

(1) [ Received, in writing, from the acupuncturist supervisor, approval to initiate acupuncture treatment ] Shall perform an acupuncture or Oriental medicine evaluation and develop an acupuncture or Oriental medicine treatment plan.

(2) [ Comply strictly with conditions or restrictions that may be placed on the course of acupuncture treatment by the acupuncturist supervisor ] May treat the patient's condition without the condition being diagnosed by a physician, dentist or podiatrist for 60 calendar days from the date of the first treatment.

(3) May treat the patient's condition beyond 60 calendar days from the date of first treatment if the patient has obtained an examination and diagnosis from a physician, dentist or podiatrist.

(4) Shall, within 60 calendar days from the date of first treatment, refer the patient to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the acupuncturist or practitioner of Oriental medicine determines that further acupuncture or Oriental medicine treatment is contraindicated for the patient or determines that the patient's condition has worsened.

(5) Shall consult with the patient's physician, dentist, podiatrist or other health care practitioner upon request of the patient.

(6) Shall cooperate with the patient's physician, dentist or podiatrist regarding the coordination of the patient's care, and comply with restrictions or conditions as directed by the physician, dentist or podiatrist.

(7) [ Not ] May not medically diagnose a physical or mental ailment or condition or prescribe or dispense a drug. A practitioner of Oriental medicine is not prohibited from dispensing or administering therapeutic herbs that contain ingredients that are similar or equivalent to active ingredients in drugs as classified by the Food and Drug Administration. This provision does not prohibit the use of diagnostic billing codes for billing or reimbursement purposes.

[ (4) Comply ] (8) Shall comply strictly with sterilization standards relative to aseptic practices.

(9) Shall maintain patient records in a manner consistent with § 16.95 (relating to medical records).

(b) [ *Responsibility to acupuncturist supervisor.* In relation to the acupuncturist supervisor, the acupuncturist shall comply with the following:

(1) Consult promptly with the acupuncturist supervisor regarding a new ailment or condition or a worsened ailment or condition of an acupuncture patient.

(2) Consult with the acupuncturist supervisor upon request of either the acupuncturist supervisor or the acupuncture patient.

(3) Practice acupuncture only under the general supervision of an acupuncturist supervisor.

(c) *Scope of acupuncturist's responsibility.*

(1) An acupuncturist is responsible solely for acupuncture evaluation and acupuncture treatment. The medical diagnosis is the responsibility of the acupuncturist supervisor.

(2) An acupuncturist is not required to practice acupuncture in the physical presence of the acupuncturist supervisor or at the location where the acupuncturist supervisor provides medical services. Where the acupuncturist may provide acupuncture services, and whether the acupuncturist may provide acupuncture services without the acupuncturist supervisor being physically present, shall be determined by the acupuncture supervisor.

(d) [ *Identification of acupuncturist or practitioner of Oriental medicine.* An acupuncturist who is not a medical doctor shall wear a tag or badge with lettering clearly visible to the patient bearing [his] the acupuncturist's name and the title "acupuncturist" or "practitioner of Oriental medicine," as appropriate. The use of the word doctor on this tag or badge is prohibited.

[Pa.B. Doc. No. 08-831. Filed for public inspection May 2, 2008, 9:00 a.m.]

## STATE EMPLOYEES' RETIREMENT BOARD

[ 4 PA. CODE CH. 247 ]

### Priority of Taxation, Attachment and Assignment of Funds

The State Employees' Retirement Board (Board) proposes to add § 247.11 (relating to priority of taxation, attachments and assignments of funds).

#### A. *Effective Date*

This proposed rulemaking will go into effect upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

#### B. *Contact Person*

For further information contact Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 787-9657, or Brian E. McDonough, Deputy Chief Counsel, State Employees'

Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 783-7317. Information regarding submitting comments on this proposal appears in Section H of this preamble.

#### C. *Statutory Authority*

This proposed rulemaking is being made under the authority of 71 Pa.C.S. § 5902(h) (relating to administrative duties of the board).

#### D. *Background and Purpose*

This proposed new section sets priorities among conflicting demands of taxation, attachments and assignments on members' retirement benefits authorized under 71 Pa.C.S. Part XXV (relating to State Employees' Retirement Code). The court's decision in *Gail G. Marshall v. State Employees' Retirement System*, 887 A.2d 351 (Pa. Cmwlth. 2005) has offered partial guidance in this area. The regulation would enable consistent application of the statute and could avoid litigation of priority issues.

#### E. *Benefits, Costs and Compliance*

##### *Benefits*

The proposed rulemaking is intended to alleviate confusion and prevent possible disputes with regard to conflicting demands on members' retirement benefits.

##### *Costs*

There are no costs to the Commonwealth, its citizens or State employees associated with this proposal.

##### *Compliance Costs*

The proposed rulemaking is not expected to impose any additional compliance costs on State employees.

#### F. *Sunset Review*

There is no sunset review.

#### G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 18, 2008, 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 Finance Committee and the House State Government Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the 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 act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### H. *Public Comments*

*Written Comments*—Interested persons are invited to submit comments regarding the proposed rulemaking to Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716. Comments submitted by facsimile will not be accepted. The Board must receive comments, suggestions or objections within 30 days of publication in the *Pennsylvania Bulletin*.

*Electronic Comments*—Comments may be submitted electronically to the Board at [rgentzel@state.pa.us](mailto:rgentzel@state.pa.us) and must be received by the Board within 30 days of publication in the *Pennsylvania Bulletin*. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

NICHOLAS J. MAIALE,  
*Chairperson*

**Fiscal Note:** 31-7. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART X. STATE EMPLOYEES' RETIREMENT BOARD**

**CHAPTER 247. BENEFITS**

**§ 247.11. Priority of taxation, attachments and assignments of funds.**

(a) The right of a person to any benefit or right accrued or accruing under the code, and the moneys in the fund are subject to prior payment or forfeiture of rights, as set forth in section 5953 of the code (relating to taxation, attachment and assignment of funds), in the following sequential priority to the extent the forfeitures and competing claims exist at the time the distribution is made:

(1) For pension forfeitures, fines and restitution as provided by the Public Employee Pension Forfeiture Act (43 P. S. §§ 1311—1315) or under the Pa. Const. Article V, § 16(b) or as otherwise provided by law.

(2) To the employer after certification by the head of the employer of the amount that the member is obligated to pay, and after review and approval by the employer's

legal representative or upon receipt of an assignment from the member in the amount so certified.

(3) To each appropriate taxing authority for money owed on account of taxes.

(4) To an alternate payee or attaching authority as set forth in an approved domestic relations order, order for support, or order for the enforcement of arrearages as described in section 5953.1 of the code (relating to approval of domestic relations order).

(5) To the member directly or to an eligible retirement plan by way of an eligible rollover distribution.

(b) Payments from a member's retirement benefits under subsection (a)(2) and (3) shall first be made from the entire accumulated deductions then standing to the credit of the member upon entering pay status. The remaining balance, if any, of payments due under subsection (a)(2) and (3) and payments due under subsection (a)(4) for orders for support or orders for the enforcement of arrearages, or both, shall be paid out of the monthly annuity payable to or on behalf of the member at the rate of up to 50% (as determined by SERS consistent with applicable law) of the gross monthly annuity until paid in full. The amount payable under subsection (a)(4) under an approved domestic relations order may be paid out of the monthly annuity paid to or on behalf of the member at the rate of up to 100% (as determined by the System consistent with applicable law) of the member's remaining monthly annuity until paid in full. Unpaid amounts remaining after termination of an annuity paid to or on behalf of the member or, after the death of the member prior to receiving an annuity, shall be paid out of the remaining initial present value then standing to the credit of the member, if any.

(c) Payments under those pension forfeitures described in subsection (a)(1) shall be made under the operative forfeiture law.

[Pa.B. Doc. No. 08-832. Filed for public inspection May 2, 2008, 9:00 a.m.]