

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

State Board of Social Workers, Marriage and Family Therapists and Professional Counselors

[49 PA. CODE CH. 47]

Biennial Renewal Fees

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) amends § 47.4 (relating to licensure fees).

Effective Date

The amendment will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. The increased fees will be effective for the biennial renewal period beginning March 1, 2009.

Statutory Authority

Section 18(c) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1918(c)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

Background and Purpose

The Board's current biennial license renewal fees for licensed social workers were established on December 1, 1990. (See 20 Pa.B. 5937.) The Board's current biennial license renewal fees for the newer licensee classifications of licensed clinical social workers, marriage and family therapists and professional counselors were originally established at 32 Pa.B. 5885 (November 27, 2002) and were set at that time at the same level as those in effect for licensed social workers (\$45). Under section 18(c) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises virtually all of its revenue through biennial renewal fees.

At its Board meeting on February 13, 2007, the Department of State's Offices of Revenue and Budget presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2004-2005 and 2005-2006, and projected revenue and expenses through 2016-2017. The Offices of Revenue and Budget project a deficit of \$67,350.37 in FY 2008-2009, a deficit of \$416,350.37 in FY 2010-2011, a deficit of \$338,350.37 in FY 2011-2012, a deficit of \$841,350.37 in FY 2012-2013, a deficit of \$827,350.37 in FY 2013-2014, a deficit of \$1,397,350.37 in FY 2014-2015, a deficit of \$1,453,350.37 in FY 2015-2016, and a deficit of \$2,097,350.37 in FY 2016-2017. The major reason for the projected deficits is that the renewal fees for social workers have not been increased since 1990 and the renewal fees for licensed clinical social workers, marriage and family therapists and professional counselors have not been increased since their inception in 2002. Those fees have carried the Board for almost 17 years for social workers and 5 years for the other newer licensee catego-

ries. As a result of the projected deficits, the Offices of Revenue and Budget recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 18(c) of the act. The Budget Office anticipates that the proposed new biennial renewal fees will enable the Board to meet its estimated expenditures for at least 9 years.

Although the \$30 fee increase is significant, it is not surprising. As already stated, the fees for licensed social workers have not been increased since 1990 and the fees for licensed clinical social workers, marriage and family therapists and professional counselors have not been increased since they were originally established in 2002. Also, in spite of the proposed increase, the Board's new renewal fee of \$75 every 2 years will still be lower than a majority of the surrounding states. For example, in New York, social workers and clinical social workers pay \$155 every 3 years. In New Jersey, social workers pay \$120 every 2 years and clinical social workers pay \$160 every 2 years. In Delaware, clinical social workers pay \$102 every 2 years. In Ohio, social workers pay \$60 every 2 years. In West Virginia, social workers and clinical social workers pay \$65 every 2 years. Finally, in Maryland, social workers and clinical social workers pay \$200 every 2 years. None of the surrounding states have separate licensee categories for marriage and family therapists or professional counselors.

Summary of Comments and the Board's Response

Notice of proposed rulemaking was published at 37 Pa.B. 5264 (September 29, 2007). The Board received comments from the National Association of Social Workers, Pennsylvania Chapter (NASW-PA); and the Pennsylvania Society for Clinical Social Work (PSCSW). In addition, as part of their review under the Regulatory Review Act, the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) submitted comments. The following represents a summary of those comments and the Board's response.

The NASW-PA recognized the need to raise fees to meet anticipated expenses, however they would prefer to see a gradual increase over the next three biennial renewal periods rather than a large one-time increase. Likewise, the PSCSW suggested that the Board consider a more graduated schedule of fee increases over the next few years in order to reduce the burden on licensed social workers. IRRC noted the concerns of these public commentators and recommended that the Board consider implementing incremental fee increases in order to lessen the financial burden on licensees.

The Department of State is still reviewing the possibility of implementing graduated fee increases to determine if that approach is feasible under the enabling acts governing the boards and commissions under the Bureau of Professional and Occupational Affairs. The Board is concerned that phasing in fee increases may not be feasible given the language in section 18(c)(1) of the act, 63 P. S. § 1918(c)(1), which provides that "[i]f the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a 2-year period, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures." At this time, the Offices of Revenue and Budget determined that a \$30 fee was necessary to avoid projected deficits in 2008-2009

and thereafter. Therefore, to avoid the projected deficits and to comply with the requirement to increase the fees so that projected revenue will meet or exceed projected expenditures, the Board has determined to go forward with the proposed increase at this time. Finally, while an increase of \$30 (from \$45 to \$75) is statistically significant, it amounts to \$15 per year for the biennial renewal period. As noted previously, the new fee will still be lower than the fees imposed by a majority of the surrounding states.

The HPLC questioned the 17-year lapse since the last biennial fee increase. As noted previously, the Board established the biennial renewal fee for social workers in 1990. In 2002, three new categories of license were created (licensed clinical social workers, marriage and family therapists and professional counselors), which had the effect of more than doubling the licensee population of the Board. At that time, biennial renewal fees for those classifications were set at the same level as that for social workers at \$45. The additional revenues from the new licensure categories continued to outpace expenditures until now. Because the revenues produced by those fees were adequate, there was no need to increase fees under section 18(c) of the act. However, a recent unanticipated increase in the expenses of the Board over the last few years has depleted the Board's surplus and the Board is now facing increasing deficits for the foreseeable future unless the biennial renewal fee is increased at this time.

The HPLC requested additional fiscal information explaining the major cost centers where significant increases had occurred in the previous 5 years. The major expense categories that have significantly increased are board administration, legal office, hearing examiners, enforcement and investigation and professional health monitoring. Specifically, the Board's administrative expenses increased from \$172,529.99 in FY 2002-2003 to \$245,880.18 in FY 2006-2007. Part of this increase is due to the Board's share of costs for the renovations related to the expansion of the office space utilized by the Health Licensing Division of the Bureau of Professional and Occupational Affairs. These costs were allocated between all health-related boards based on licensee population.

Legal office costs increased from \$75,326.65 in FY 2002-2003 to a high of \$195,493.34 in FY 2005-2006 followed by a decrease to \$152,681.01 in FY 2006-2007. Still these costs have essentially doubled in only 5 years. These include the costs of the Board's legal counsel, and the costs of prosecuting, adjudicating and defending disciplinary matters before the Board. Similarly, the hearing expenses incurred have nearly doubled over these 5 years, from \$6,208.09 in FY 2002-2003 to \$11,336.18 in FY 2006-2007. Enforcement and investigation costs saw the most dramatic increases in expenses—from \$23,957.99 in FY 2002-2003 to \$86,096.00 in FY 2006-2007.

The increases in enforcement and investigation, legal office costs and hearing expenses are the result of a combination of factors. Doubling the licensee population of the Board since 2002 obviously results in an increase in potential disciplinary actions. In addition, the Board's and the Department's presence on the internet has resulted in increased public awareness of the complaint process and has made it easier to file a complaint against a licensee. For example, in FY 2002-2003, a total of 74 disciplinary files were opened. In FY 2006-2007, there were 163 disciplinary files opened (down from 222 in FY 2005-2006). Each complaint file must be investigated to determine if a violation of the act or regulations of the Board occurred. The legal office must then prosecute

those matters where a violation is found. The Board incurs hearing expenses for each matter actually prosecuted, and the Board incurs additional legal costs defending any appeals.

Finally, costs related to professional health monitoring increased from only \$2,095.18 in FY 2002-2003 to \$5,156.02 in FY 2006-2007. This increase is a result of an increase in the number of the Board's licensees who are participating in the Department's Professional Health Monitoring Program (PHMP). The number of participants in this program increased from 6 in FY 2005-2006 to 9 in FY 2006-2007. PHMP costs are allocated based on the number of open cases.

These cost categories represent the bulk of the Board's budget. Overall, the Board's expenditures increased from \$349,932.98 in FY 2002-2003 to \$580,132.58 in FY 2005-2006 and \$591,199.77 in FY 2006-2007. Thus, the Board must set its fees at a level that will produce approximately \$1.2 million per biennial renewal period to meet or exceed its expenses as required by the act. There are approximately 14,500 Board licensees. Therefore, at \$75 per licensee, the anticipated revenue from biennial renewal fees, which makes up the bulk of the Board's revenue, will be approximately \$1,087,500. The remaining revenue comes from other user fees and from civil penalties imposed by the Board.

Fiscal Impact

The final-form rulemaking increases the biennial renewal fee for licensed social workers, clinical social workers, marriage and family therapists and professional counselors from \$45 to \$75 each biennial renewal period. The rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The final-form rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the final-form rulemaking should not create additional paperwork for the private sector.

Sunset Date

The act requires that the Board monitor its revenue and costs on a fiscal year and biennial 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 September 19, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 5264 (September 29, 2007), to IRRC and to the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 11, 2008, the final-form rulemaking was approved by the HPLC. On July 9, 2008, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 10, 2008, and approved the final-form rulemaking.

Additional Information

Interested persons may obtain information regarding the final-form rulemaking by writing to Beth Michlovitz, Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 or bmichlovit@state.pa.us.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) There are no amendments to the final-form rulemaking that would enlarge the purpose of the proposed rulemaking published at 37 Pa.B. 5264.
- (4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the act.

Order

The Board orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 47, are amended by amending § 47.4 to read as set forth at 37 Pa.B. 5264.
- (b) The Board shall submit this order and 37 Pa.B. 5264 to the Office of General Counsel and to the Office of Attorney General as required by law.
- (c) The Board shall certify this order and 37 Pa.B. 5264 and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

MICHAEL J. DESTEFANO,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 4045 (July 26, 2008).)

Fiscal Note: Fiscal Note 16A-6915 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 08-1486. Filed for public inspection August 15, 2008, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION [58 PA. CODE CH. 141] Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2008, meeting, adopted the following rulemaking:

Amend Chapter 141, Appendix G (relating to hunting hours table for June 29, 2008 through July 4, 2009) to replace the Sunrise/Sunset Table with an up-to-date Hunting Hours Table and Migratory Game Bird Hunting Hours Table to accurately reflect the dates and hours of legal hunting for the 2008-2009 hunting year.

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

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

Notice of proposed rulemaking was published at 38 Pa.B. 3242 (June 14, 2008).

1. *Purpose and Authority*

Each year there is a shift in calendar days for each month. As a result of this occurrence, the Tables of Hunting Hours found in § 141.4 must be amended and updated on an annual basis to accurately reflect the upcoming year's dates and hours for legal hunting. Towards this end the Commission has amended § 141.4 by replacing the current Sunrise/Sunset Table with an up-to-date Hunting Hours Table and Migratory Game Bird Hunting Hours Table to accurately reflect the dates and hours of legal hunting for the 2008-2009 hunting year.

Section 322(c)(1) of the code (relating to powers and duties of the Commission) specifically empowers the Commission to "fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment of § 141.4 was adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amended Chapter 141, Appendix G to replace the Sunrise/Sunset Table with an up-to-date Hunting Hours Table and Migratory Game Bird Hunting Hours Table to accurately reflect the dates and hours of legal hunting for the 2008-2009 hunting year.

3. *Persons Affected*

Persons wishing to hunt or trap within this Commonwealth will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

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

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

The effective dates of the final-form rulemaking are July 1, 2008, to June 30, 2009.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending Chapter 141, Appendix G, to read as set forth at 38 Pa.B. 3242.

(b) The Executive Director of the Commission shall certify this order and 38 Pa.B. 3242 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-271 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 08-1487. Filed for public inspection August 15, 2008, 9:00 a.m.]

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

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2008, meeting, adopted the following rule-making:

Amend § 147.675 (relating to validity of permit) to expand the eligibility period for the validity of DMAP permits to include open seasons for antlered deer during the regular firearms season while also providing clarification that DMAP harvest permits are valid only to harvest antlerless deer.

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

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

Notice of proposed rulemaking was published at 38 Pa.B. 3244 (June 14, 2008).

1. *Purpose and Authority*

At the April 2008 Commission meeting, the Commission adopted the creation of a bifurcated regular firearms season in Wildlife Management Units 2D, 2G, 3C and 4B during which the first 5 days will be limited to the harvest of antlered deer only and the last 7 days open to

the harvest of both antlered and antlerless deer. The Commission has recognized that the intentional shortening of the regular firearms season for antlerless deer would also have the unintentional affect of causing a resulting 1 week reduction in the time periods during which DMAP permits would be valid. In its continuing interest to assist landowners in achieving deer densities consistent with their land use goals through the use of licensed hunters, the Commission amended § 147.675 to expand the eligibility period for the validity of the DMAP permits to include open seasons for antlered deer during the regular firearms season. In an effort to curb confusion, the Commission also amended § 147.675 to clarify that DMAP harvest permits are valid only to harvest antlerless deer.

Section 2901(b) of the code (relating to authority to issue permits) provides that "The commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment of § 147.675 was adopted pursuant to this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 147.675 to expand the eligibility period for the validity of DMAP permits to include open seasons for antlered deer during the regular firearms season while also providing clarification that DMAP harvest permits are valid only to harvest antlerless deer.

3. *Persons Affected*

Persons wishing to hunt white-tailed deer within this Commonwealth under a DMAP harvest permit may be affected by the final-form rulemaking.

4. *Comment and Response Summary*

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

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.675 to read as set forth at 38 Pa.B. 3244.

(b) The Executive Director of the Commission shall certify this order and 38 Pa.B. 3244 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-270 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 08-1488. Filed for public inspection August 15, 2008, 9:00 a.m.]
