

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 165]

Revisions to the Special Allowance for Supportive Services Requirements; Road to Economic Self-sufficiency through Employment and Training (RESET) Program

Statutory Authority

The Department of Public Welfare (Department) under the authority of sections 201(2), 403(b) and 408(c) of the Public Welfare Code (62 P.S. §§ 201(2), 403(b) and 408(c)) and the Federal Food Stamp regulation in 7 CFR 273.7(d)(4) (relating to work provisions), intends to amend the regulations as set forth in Annex A.

Purpose of Regulation

The purpose of this proposed rulemaking is to enhance program integrity and effectiveness so that funds for special allowances are available to the greatest number of participants with a verifiable and documented need for supportive services. This proposed rulemaking amends regulations pertaining to special allowances for supportive services that the Department provides to individuals who apply for and receive cash assistance or Supplemental Nutrition Assistance Program (SNAP) benefits (formerly known as food stamps). These special allowances are limited to those who agree to participate in or who are participating in approved work or work-related activities. The Department is amending Chapter 165 (relating to Road to Economic Self-sufficiency through Employment and Training (RESET) Program) and Appendix A of this chapter (relating to employment and training special allowances). Appendix A enumerates the types of special allowances for supportive services for which the Department authorizes payment, including the rate and frequency of the payment. This proposed rulemaking also provides that future amendments to Appendix A may be accomplished by publishing a notice in the *Pennsylvania Bulletin*.

This proposed rulemaking accomplishes the objective of maintaining the availability of special allowances in a fiscally responsible and cost effective manner given the current economic and budget crisis. This proposed rulemaking amends both the maximum amount and the frequency for special allowances to maximize scarce resources so that funds for special allowances are available to the greatest number of participants. Under section 408(c) of the Public Welfare Code regarding meeting special needs; and work supports and incentives, the Department is required to "take into account availability, costs and the number of recipients needing services within the geographic area and shall seek to provide essential services to the greatest number of recipients." Future adjustments to the amount of the payment for supportive services will be determined by the Department based on the availability of resources. By maximizing the Commonwealth's scarce resources, this proposed rulemaking complies with State law and ensures that assistance for supportive services is available to the greatest number of participants who verify and document the need for services.

In addition, Appendix A categorizes the type of special allowances into six general categories: public transportation; private transportation; motor vehicle purchase; motor vehicle insurance; clothing; and work, education and training. Each category includes the types of special allowances which may be issued by the Department and the maximum annual or lifetime amount.

Finally, this proposed rulemaking provides for the recoupment or reduction of an overpayment of a Temporary Assistance for Needy Families (TANF) or General Assistance (GA) cash assistance grant to recover a special allowance for supportive services payment. The Department will not use recoupment to recover a special allowance for supportive services payment issued from SNAP funds.

Background

With the enactment of the Deficit Reduction Act of 2005, the TANF program was reauthorized. See Pub. L. No. 109-171. Under the reauthorized TANF program, the Commonwealth is required to increase the work participation rate (WPR) for families or the Commonwealth will face financial penalty of up to \$36 million. To avoid financial penalty, the Department has intensified its efforts to meet the Federal WPR and instituted new initiatives to ensure that all work-eligible individuals participate in approved work or work-related activities. As these participants enroll in employment and training activities or search for or obtain employment, the demand for special allowances for supportive services increases as does the strain on the Commonwealth's fiscal resources.

Further, under the Food, Conservation, and Energy Act of 2008 (Pub. L. No. 110-234), also known as the 2008 U.S. Farm Bill, section 4108 currently allows SNAP employment and training funds to be used to provide support to SNAP only participants who participated in other SNAP work-related activities and obtained employment. These funds allow the Department to provide additional support to these recipients.

Requirements

The following is a summary of the major provisions in the proposed rulemaking:

§ 165.1 (relating to general).

The Department proposes to amend § 165.1(a) by requiring a participant to participate and comply with RESET, including meeting hourly and other work and work-related requirements as specified on the Agreement of Mutual Responsibility (AMR) or Employment Development Plan (EDP). The Department proposes to revise § 165.1(a) and add subsection (d) to clarify that the provisions of this chapter apply to participants who receive TANF and GA cash assistance and that the requirements in §§ 165.41—165.46 (relating to special allowances for supportive services) also apply to participants who receive SNAP only benefits. For SNAP only participants, a special allowance for supportive services may be authorized as determined by the Department only up to the employment start date, with the following exception. SNAP only participants who obtain employment after participating in a SNAP work-related activity may receive special allowances for supportive services not to exceed the types and time frames permitted by Federal law.

The Department proposes to amend subsection (b) to clarify that special allowances for supportive services are made for the least costly item or service which is

available and practical considering the location and hours of scheduled employment or training, and the location of the participant's residence in relation to the provider of the item or service.

§ 165.2 (relating to definitions).

The Department proposes to amend § 165.2 to add the definition of "collateral contact" and "employment and training provider." The Department proposes to define "SNAP only participant" to describe an individual who applies for or receives SNAP only benefits but does not receive cash assistance under TANF or GA programs. The Department proposes to revise the definition of "special allowances for supportive services" by replacing the phrase "to be necessary" with "to be required." This definition is consistent with the revisions to § 165.44 (relating to verification for special allowances for supportive services). Individuals must provide verification that a special allowance for supportive services is required by the employer or education and training provider. The Department also proposes to replace the phrase "prepare for seek, accept or maintain education, employment or training" with the phrase "participate in an approved work or work-related activities."

§ 165.41 (relating to eligibility for special allowances for supportive services).

The Department proposes to revise § 165.41(a) by replacing the language "Cash Assistance or Food Stamp recipient" with the language "participant" for consistency. The Department proposes to delete § 165.41(b) since the requirements of that subsection are incorporated into subsection (a). Consequently, § 165.41(c)—(f) is redesignated as § 165.41(b)—(e). The Department proposes to amend § 165.41(e), formerly designated as § 165.41(f), to provide that special allowances for supportive services may be provided up to a maximum amount and frequency established by the Department in Appendix A.

The Department is amending subsection (b), formerly designated as subsection (c), to clarify that a special allowance is made only to the extent that item or service is not available from either a public or nonprofit source. In addition, the Department is deleting the reference to parental choice since that exception relates to the deleted child care provisions. Those child care provisions are now codified in Chapter 168 (relating to child care).

Because special allowance for supportive services also apply to SNAP only participants, the Department is amending the language in subsection (d), formerly designated as subsection (e), to clarify this intent. In addition, the Department is also amending the same language in § 165.44(b)(1) (relating to verification for special allowances for supportive services) for conformity.

§§ 165.42(a) and (c), 165.44(c) and 165.46(a) (relating to advance provision of special allowances for supportive services; verification for special allowances for supportive services; and types of special allowances for supportive services).

The Department is amending these subsections to delete all references to child care, as the regulations governing child care may be found in Chapter 168.

§ 165.44 (relating to verification for special allowances for supportive services).

The Department is amending the verification requirements in this section to enhance program integrity and effectiveness. Verification of the need for special allowances for supportive services is required prior to authorization. Further, acceptable verification for special allow-

ances may consist of written statements, collateral contacts or completed Departmental forms. If collateral contacts are used, it shall be documented in the participant's file.

The Department proposes to amend § 165.44(a) to clarify that an individual must provide verification that the requested supportive service is required for participation in an approved work or work-related activity or to accept employment.

The Department is also amending subsection (b) to require that the participant must verify actual costs incurred for a reoccurring or nonrecurring special allowance for supportive services. In addition, verification may be required from a participant, a provider of supportive services, or both, to verify that the participant received the approved special allowance for supportive services and that the provider received payment for the amount the participant was eligible to receive.

Finally, the Department is further amending subsection (b) to provide that the Department will process an overpayment referral to recover special allowance for supportive services. Subsection (b) describes circumstances for which a referral may be appropriate.

§ 165.46 (relating to types of special allowances for supportive services).

The Department proposes to delete the provisions of § 165.46(a) that relate to child care for GA recipients because regulations governing child care are found in Chapter 168. The Department is also proposing to delete the provisions relating to incapacitated care. Because the Department is responsible to provide essential services to the greatest number of recipients, the Department is deleting this provision because the use of this type of special allowance is uncommon and resources are limited. As a result of the proposed deletions of subsections (a) and (b), subsections (c) and (d) are redesignated as § 165.46(a)—(c), respectively. Likewise, to maximize the Commonwealth's scarce resources, the special allowances for supportive services provisions relating to moving, relocation, air and long distance rail, lodging and food are also proposed to be deleted. The Department is including a category for motor vehicle insurance, if it is required for an individual to participate in a work or work-related activity, for the actual cost up to \$1,500 in a lifetime. A special allowance for motor vehicle insurance was previously administered by employment and training contractors. In addition, the Department is amending subsection (b)(5) to clarify that a special allowance is not available for reoccurring fees, such as license fees.

The Department also proposes to amend § 165.46 to be consistent with revisions to §§ 165.41 and 165.44. References to "approved education or training activities" are replaced with the phrase "approved work-related activities" or "approved work or work-related activities." Since participants must now verify that supportive services are required to participate in approved work or work-related activities, references to "need for," "needed" or "necessary" supportive services are replaced with the term "required."

The Department proposes to add § 165.46(c) to provide that the Department may amend Appendix A as necessary based on the availability of funding and demand for supportive services. Amendments to Appendix A will be made by publishing a notice in the *Pennsylvania Bulletin*. This process will enable the Department to more efficiently revise Appendix A in response to increases or decreases in available funding, increases in the costs of

goods and services and fluctuations in the number of individuals and families who require and qualify for special allowances for supportive services.

§ 165.91 (relating to restitution).

The Department is amending this section to clarify the Department is proposing to recover TANF-funded special allowance for supportive services overpayments through grant reduction or recoupment. Title II of the Family Support Act of 1988 (Pub. L. No. 100-485) created the Job Opportunities and Basic Skills (JOBS) Training Program. Under the JOBS program, states were prohibited from recovering special allowances for supportive services overpayments through recoupment. Since the JOBS Program was repealed with the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193), states are no longer subject to this prohibition. This proposed revision does not apply to special allowances for supportive services payments issued using SNAP funds.

Appendix A (relating to employment and training special allowances).

The Department is proposing to amend the maximum amount and frequency of payments issued for special allowances. Participants will be offered special allowance payments up to a maximum amount for either an annual or lifetime limit. The Department also proposes to amend Appendix A to clearly show that SNAP only participants may qualify for payment of special allowances for supportive services.

Affected Individuals and Organizations

This proposed rulemaking affects individuals who receive TANF and GA cash assistance who are participating in approved work or work-related activities as specified in an approved Agreement of Mutual Responsibility (AMR). This proposed rulemaking also affects SNAP only participants who participate in approved work or work-related activities according to the provisions of their approved Employment Development Plan (EDP).

Accomplishments and Benefits

This proposed rulemaking will enhance program integrity and effectiveness so that funds for special allowances are available to the greatest number of participants with a verifiable and documented need for supportive services. This proposed rulemaking benefits individuals who receive TANF and GA cash assistance who are participating in approved work or work-related activities. This proposed rulemaking also benefits SNAP only participants who must participate in approved work or work-related activities according to the provisions of their approved EDPs.

In addition, the maximum allowance for the purchase of motor vehicle has been adjusted to reflect a reasonable cost a participant may expect to incur. The Department is also amending the allowance for private transportation from 12¢ per mile to a rate determined by the Department, not to exceed the Commonwealth reimbursement rate for actual cost of gasoline. Further, the Department's proposal to reorganize special allowances into six categories allows participants to choose how to utilize these allowances to best meet their needs.

The Department's rationale for reducing the maximum limit for categories of special allowances is to maximize scarce resources. In addition, this reduction is also based on data collected and maintained by the Department that indicates current maximums established for these particular allowances are higher than actual usage supports.

The proposed rulemaking also permits payment as often as required for approved work or work-related activities up to the maximum limit. Under this proposed rulemaking, individuals may qualify for and receive more than one special allowance for supportive services payment up to the maximum payment.

With the enactment of the Deficit Reduction Act of 2005 (Pub. L. No. 109-171) which reauthorized the TANF program, the onus is on the Commonwealth to increase the work participation rate (WPR) for families or the State will face financial penalty of up to \$36 million. If the State incurs a financial penalty, there will be a reduction of funding available to families. To avoid fiscal sanctions, the Commonwealth has intensified its efforts to meet the Federal WPR and instituted new initiatives to ensure that all work-eligible individuals participate in approved work or work-related activities.

This proposed rulemaking complies with section 408(c) of the Public Welfare Code, which provides that "in establishing time limits and levels of access to transportation and work support, the department shall take into account availability, costs and the number of recipients needing services within the geographic area and shall seek to provide essential service to the greatest number of recipients." By proposing a maximum amount for special allowances and by categorizing special allowances, this rulemaking complies with State law and ensures that assistance to pay for work supports is available to the greatest number of individuals.

Fiscal Impact

The changes in the maximum amount for special allowances have savings which is estimated at \$5.910 million in the first Fiscal Year (FY). Full year implementation savings for the following FY is estimated at \$17.732 million. The changes in the maximum allowance of payment for the purchase of a motor vehicle and mileage reimbursement will result in a cost to the Commonwealth of \$3.711 million in the first FY. Full-year implementation costs the following year is estimated at \$11.133 million. The net result of these changes is an estimated savings of \$2.199 million in the first year with the first full-year savings estimated at \$6.599 million.

Paperwork Requirements

Documentation is required for all types of verification for special allowances for supportive services. Verification of the need for special allowances is required prior to authorization. Further, a participant is also required to verify actual expenses. In addition, a participant and a provider of supportive services also may be required to verify the receipt of supportive services and the amount of payment.

Effective Date

This proposed rulemaking is effective upon final publication in the *Pennsylvania Bulletin*.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department at the following address: Edward J. Zogby, Director, Bureau of Policy, 4th Floor, Health and Welfare Building, Harrisburg, PA 17105, (717) 787-4081 within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-518 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 12, 2010, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare (Committees). In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has any comments, recommendations or objections to any portion of the proposed amendment, it may notify the Department and the Committees within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulation.

HARRIETT DICHTER,
Acting Secretary

Fiscal Note: 14-518. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

**CHAPTER 165. ROAD TO ECONOMIC
SELF-SUFFICIENCY THROUGH EMPLOYMENT
AND TRAINING (RESET) PROGRAM**

GENERAL RESET PROVISIONS

§ 165.1. General.

(a) A recipient who is not exempt shall participate in **and comply with RESET, including meeting hourly and other work and work-related requirements as specified on the AMR or EDP, unless the recipient establishes good cause.** An exempt individual may volunteer to participate in **[RESET] an approved work or work-related activity and shall comply with the AMR or EDP.** The **[CAO] Department** will inform an applicant and recipient of the rights **[and],** responsibilities **[,]** and services and benefits available to RESET participants. **[A] The Department or its agent will assess the** recipient's ability to meet RESET participation requirements **[will be assessed]** after consultation with the recipient. **[Applicants and recipients shall comply with this chapter.]**

(b) The Department will provide RESET participants **[, to the extent necessary,] with** case management and **[approved] special allowances for** supportive services as **[may be necessary] required to [support participants in becoming] help them become self-sufficient. The Department will authorize special allowances for supportive services for the least**

costly item or service which is available and practical considering the location and hours of scheduled employment or training, and the location of the participant's residence in relation to the provider of the item or service. In addition, the Department will provide participants **[will be provided] with or [referred] refer them to [education, training and employment-related] work or work-related** activities designed to break the cycle of welfare dependency. To the extent it deems possible, the Department will identify and promote resources in the public and private sectors that may assist participants to prepare for and obtain employment **[in jobs]** they may realistically be expected to obtain.

(c) **[The Department may, in its discretion, provide employment, education, training, work-related activities or work experience programs to applicants or recipients.]** Nothing in this chapter shall be interpreted as requiring the Department to develop or to offer or to continue to offer employment, education, training, work-related activities or work experience programs.

(d) **This chapter applies to recipients of TANF and GA cash assistance. Sections 165.41—165.46 (relating to special allowances for supportive services) also apply to SNAP only participants as defined in § 165.2 (relating to definitions). For SNAP only participants, a special allowance for supportive services may be authorized as determined by the Department only up to the employment start date, with the following exception. SNAP only participants who obtain employment after participating in a SNAP work-related activity may receive special allowances for supportive services not to exceed the types and time frames permitted by Federal law.**

§ 165.2. Definitions.

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

* * * * *

***Collateral contact*—A method to establish communication or obtain additional information which supports or reinforces information presented to the Department.**

EDP—Employment Development Plan—

(i) An individualized agreement with the Department that is completed by the **[Food Stamp recipient] SNAP only participant** and is based on the individual's skills and abilities.

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***Employment and training provider*—An entity funded or approved by the Department, that provides work or work-related skills instruction to enable participants to become self-sufficient.**

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***Grant diversion*—The use of all or a portion of a recipient's cash assistance grant and [Food Stamps] SNAP benefits as a wage supplement to an employer.**

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Participant—An individual who [is actively engaged] agrees to participate or is participating in a mutually agreed upon [and] approved [education, employment or training related] work or work-related activity.

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SNAP—Supplemental Nutrition Assistance Program.

SNAP only participant—An individual who applies for and receives SNAP benefits but does not receive cash assistance under the TANF or GA programs.

Special allowances for supportive services—Payments for items and services [as determined by] the Department determines to be [necessary to enable] required for a participant to [prepare for, seek, accept or maintain education, employment or training] participate in an approved work or work-related activity.

SPECIAL ALLOWANCES FOR SUPPORTIVE SERVICES

§ 165.41. Eligibility for special allowances for supportive services.

(a) A [cash assistance or Food Stamp recipient] participant may receive [certain] special allowances [to pay for in advance or to reimburse costs of] for supportive services, as specified in this chapter, to enable the individual to [prepare for, seek, accept or maintain education, training or employment] participate in an approved work or work-related activity for the number of hours as specified on the AMR or EDP. [Payment for supportive] Supportive services will be [made in advance whenever the payment is needed] provided if required by the individual to [begin or maintain a RESET] participate in an approved work or work-related activity.

(b) [For an individual seeking cash assistance to qualify to receive a special allowance for supportive services, the individual shall be determined eligible for cash assistance, participate in RESET unless exempt and have an approved AMR. For an individual seeking only Food Stamps, to qualify for a special allowance for supportive services, the individual shall comply with an approved EDP. The approved AMR or EDP, whichever is applicable, must specify the activities for which the supportive services will be provided.

(c) [A special allowance for supportive services is made only to the extent that the item or service is not available from another public or non-profit source at no cost to the individual, [does not interfere with parental choice as specified in §§ 165.46(a)(5) and 168.11(b) (relating to types of special allowances for supportive services; and general requirements),] and cannot be met by educational assistance. The activity may not be secondary education or an equivalent level of vocational or technical training, unless the individual is [a] pregnant [female] or a custodial parent.

[(d)] (c) The [CAO] Department will inform the individual, [in writing and] orally and in writing, of the availability of special allowances for supportive ser-

vices at application, [reapplication] redetermination, recertification and whenever the AMR or EDP is developed or revised.

[(e)] (d) The [CAO shall] Department will assist the participant to obtain supportive services required to participate in [employment, education, training and job search activities, including precomponent activities such as orientation] approved work or work-related activities as specified on an AMR or EDP, with one exception. Supportive services are not available for a SNAP only participant to maintain current employment, except as provided in § 165.1(d) (relating to general).

[(f)] (e) Except as otherwise restricted in this chapter, special allowances for supportive services may be granted [as often as required to enable the individual to participate in an approved education or training activity and once for each job] up to the maximum amount and frequency established by the Department in Appendix A (relating to work and work-related special allowances).

§ 165.42. Advance [payment] provision of special allowances for supportive services.

(a) Special allowances for supportive services [, including child care, shall] will be [paid] provided in advance of the date [that payment is] required by the provider, consistent with the requirements and time frames in § [§] 165.45 [and 168.1(b)(3)] (relating to time frames for authorization of payment of special allowances for supportive services [; and policy on payment of child care]).

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[(c) This section does not apply to vendor payments for child care under § 165.46(a)(11)(ii) (relating to types of special allowances for supportive services).]

§ 165.43. Requests for special allowances for supportive services and time frames for eligibility determinations.

(a) The [CAO shall] Department will document an oral or written request for a special allowance for supportive services. A written decision approving or denying the request [shall] will be issued by the [CAO] Department no later than 15-calendar days following the request.

(b) A Notice to Applicant as provided in Chapter 125 (relating to application process), shall be used to inform the [client] individual of the [CAO's] Department's decision on the request for supportive services.

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§ 165.44. Verification for special allowances for supportive services.

(a) Verification needed to authorize [payment] special allowances for supportive services.

(1) Before authorizing the [initial payment] special allowance for supportive services, the [CAO shall] Department will determine the following:

(i) Whether the supportive service requested is [**necessary**] required to enable the participant to engage in an approved [**education or training**] work or work-related activity [**or to apply for employment**].

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(2) Verification [**of the need for**], including collateral contact, that the special allowances for supportive services is required [**only when it is not readily apparent**] will be provided prior to authorization.

(3) Acceptable verification [**of information need for initial authorization**] consists of collateral [**contracts**] contacts, written statements or completed Departmental forms, obtained from sources such as employers, prospective employers, school officials, **employment and training providers** or providers of supportive services. **If collateral contacts are used, the information will be documented in the participant's file.**

(4) The [**CAO shall**] Department will use collateral contacts whenever necessary to ensure that payment is made in advance of the date that payment is required [**by the provider**].

(b) *Verification needed [**to review continued eligibility**] for reoccurring and nonrecurring special allowances for supportive services.*

(1) The participant's [**continued**] eligibility for a special allowance for a supportive service is reviewed monthly, or more often if [**costs**] expenses are likely to change, at each [**reapplication**] redetermination or recertification, whenever a change in employment or training is reported by the participant or the **employment and training provider**, and whenever the **AMR or EDP** is revised.

[(2) To review the participant's continued eligibility, the CAO shall require verification of] (i) A participant shall verify the actual costs incurred by the participant for the supportive service and [**verification of**] the participant's attendance at [**an education or training activity or at employment**] the approved work or work-related activity. The Department may require that the participant or provider of the supportive service, or both, verify that the participant received the approved special allowance for supportive services and that the provider received payment for the amount the participant was eligible to receive.

[(3)] (ii) When verification provided [**to the CAO**] indicates a change in eligibility, payment of the special allowance to the participant shall be reduced, terminated or increased, as appropriate, upon issuance of a confirming notice to the participant, in accordance with § 133.4(c) (relating to procedures).

(2) The Department will process an overpayment referral to recover a special allowance for supportive services in accordance with § 165.91 (relating to restitution) and Chapter 255 (relating to restitution). Circumstances for which a referral may be appropriate include the following:

(i) The participant was ineligible for cash assistance or SNAP only benefits in the month the Department issued a special allowance for supportive services.

(ii) The participant did not use the special allowance for supportive services for its intended purpose.

(iii) The actual cost of the supportive service was less than the estimated cost of the service.

(iv) The participant provided falsified or erroneous documentation to obtain a special allowance for supportive services.

(v) The participant received a reoccurring special allowance for supportive services when the need no longer existed.

(vi) The participant or provider of supportive services, or both, did not provide verification, such as a receipt, that the supportive services requested were obtained using the special allowance payment.

(viii) The participant did not participate in or comply with RESET, including meeting hourly and other work and work-related requirements as specified on the AMR or EDP.

[(c) *Special requirements related to child care for GA recipients.*

(1) Child care costs shall be verified through a collateral contact by the CAO with the child care provider, by a written statement signed by the provider or on a form specified by the Department.

(2) When a special allowance for child care is authorized based on a collateral contact or a written statement from the provider, verification of the charge for child care on a form specified by the Department shall be submitted to the CAO within 30 days of the first day child care costs were incurred. The CAO shall assist the client, as needed, to obtain a completed verification form from the provider.

(3) Verification of factors other than cost relating to the need for child care shall consist of collateral contacts with, or written statement from, employers, prospective employers, physicians, licensed psychologists, school officials, or training providers or copies of court orders or pay stubs. The client's statement regarding suspected child abuse is acceptable evidence. Information previously verified need not be repeated unless it is subject to change.]

§ 165.45. Time frames for authorization of [**payment of**] special allowances for supportive services.

(a) When verification is obtained or received by the [**CAO**] Department within 5-calendar days following a request for a special allowance for supportive services, **if approved**, the [**CAO shall**] Department will authorize [**payment**] the request no later than 10-calendar days following the date of request.

(b) When verification is obtained or received by the [**CAO**] Department more than 5 days following a request for special allowance for supportive services, the [**CAO shall**] Department will authorize [**payment**] the request no later than 5-calendar days after receipt of the verification.

(c) When the last day for authorization of payment falls on a weekend or holiday, the [**CAO shall**] Depart-

ment will authorize [payment] the request on or before the working day immediately preceding the week-end or holiday.

(d) Authorization [of payment] shall include actually processing the data needed to issue a check, including completing required forms and performing data entry.

(e) The [CAO shall] Department will issue the written decision approving or disapproving the request for a special allowance for a supportive service within the time frame for authorization [of payment] in this section.

(f) [The CAO shall] For payments of special allowances for supportive services, the Department will use the method of payment, such as a county or central issuance, that is best calculated to provide payment to the [client] participant in advance of the date that payment for the supportive service is required by the provider.

§ 165.46. Types of special allowances for supportive services.

(a) [*Child care for GA recipients.*]

(1) Payment for child care is made to enable the caretaker/relative or custodial parent to participate in an approved education or training activity or to apply for employment.

(2) The CAO shall promptly inform an ETP participant who is in need of child care about the following:

(i) The types and locations of child care providers reasonably accessible to the participant.

(ii) The assistance available to help the participant select an appropriate child care provider.

(iii) The assistance available on request to help the participant obtain a child care provider.

(iv) That child care payments shall be paid in advance of the date that payment is required by the provider, consistent with the requirements and time frames in § 165.45 (relating to time frames for authorization of payment of special allowances for supportive services), to ensure that the participant will have access to the child care provider of the participant's choice.

(3) Special allowances for child care are available for the following types of providers, including the following:

(i) Center-based care.

(ii) Group family day care.

(iii) Family day care.

(iv) Department of Education administered day care.

(v) Unregulated care.

(4) Child care payments may be made only to a person or business entity who allows parental access to the child while a child is in care without the need for prior notification and who provides care in accordance with applicable Federal, State and local law.

(5) The caretaker/relative shall have the right to choose from any type of child care that is available

under this chapter and the right to choose any child care provider who meets the requirements of this chapter.

(6) Payments are made for care of a child who is one of the following:

(i) Twelve years of age or younger, living in the home of the parent or caretaker/relative and receiving cash assistance, or who would be eligible to receive cash assistance except for the receipt of SSI or foster care under Title IV-E of the Social Security Act (42 U.S.C.A. §§ 670—677).

(ii) Thirteen years of age or older if it has been verified by a physician or licensed psychologist that the child is not physically or mentally capable of caring for himself or it is verified that the child is under a court order requiring adult supervision, the child is living in the home of the parent or caretaker/relative and is receiving cash assistance, or who would be eligible to receive cash assistance except for the receipt of SSI or foster care under Title IV-E of the Social Security Act.

(7) Payment is made for the eligible cost of child care up to the maximum allowance established by the Department in § 168.1 (relating to policy on payment of child care) or the rate charged the general public, whichever is less, per child. Recipients receiving special allowances for child care before implementation of the maximum allowances continue to receive payment for actual reasonable costs incurred for child care. Eligible costs include charges for days on which the child does not attend due to illness, vacation, or the like. Charges for transporting the child to or from care are included if not levied as a separate charge by the provider.

(8) Payment for providing care of children will not be made to the following persons or business entities owned by:

(i) A biological or adoptive parent of the child.

(ii) A legal guardian of the child.

(iii) A stepparent of the child living in the home.

(iv) Persons receiving TANF as essential persons.

(v) Other members of the budget group of which the child is a member.

(9) Payment for child care shall be made for persons awaiting entry into, or during breaks in, approved education training or employment for one of the following:

(i) Up to 2 weeks.

(ii) Up to 30 days when it is verified that the arrangements would otherwise be lost in the interim period.

(10) Payment of child care shall be reasonably related to the hours of employment or ETP participation, including travel time.

(11) Payment for child care may be made by one of the following:

(i) Direct payment to the recipient when the provider is unregulated or is regulated but is not enrolled in the Department's child care vendor payment system.

(ii) Vendor payment to a regulated provider who has signed the Department's vendor payment agree-

ment and who is enrolled in the Department's child care vendor payment system.

(iii) Restricted endorsement check to the recipient and provider.

(iv) The earned income deductions in §§ 183.94(3) and 183.95(2) (relating to TANF earned income deductions; and GA earned income deductions) for employed clients, except that clients earning wages in a work experience training activity may receive payment for the difference between the child care deduction and the maximum child care allowance established by the Department in § 168.1 when the cost of child care exceeds the deductions in §§ 183.94(3) and 183.95(2).

(12) Child care services are not considered as needed when an unemployed biological or adoptive parent, specified relative or legal guardian is in the home unless that person is physically or mentally incapable of providing care or is involved in education, training, job search or employment related activities, or the child is at risk due to suspected child abuse or the custodial parent is participating in a Single Point of Contact or Department or Department of Education Pregnant and Parenting Youth Program.

(13) Preexpenditure approval is required unless the child care is for a job interview and the client is unable to contact the worker prior to the scheduled interview.

(b) *Care of incapacitated adults.* Payments are made for the eligible costs of nonmedical care up to the maximum rates established for infant care of an incapacitated adult living in the same home if care is required to enable a recipient to participate in an approved education or training activity or to apply for employment and no other sound plan can be made for care of the incapacitated adult. Costs for care of incapacitated adults for maintaining employment are met by the earned income deductions in §§ 183.94(3) and 183.95(2) except that clients earning wages in a training activity, such as work experience, may receive payment for the difference between the deduction for care of an incapacitated adult found in §§ 183.94(3) and 183.95(2) and the actual non-medical cost incurred.

(1) There shall be verification of the person's incapacity and the need for the care.

(2) Payment will be made for the actual cost of care.

(3) Payment for providing care will not be made to the following:

(i) The spouse of an incapacitated person.

(ii) An essential person.

(iii) Other members of the budget group of which the recipient or incapacitated adult is a member.

(4) Preexpenditure approval is required.

(c) *Transportation and related expenses.* [Payments are made for eligible transportation costs incurred due to participation in ETP activities or for accepting employment. Transportation costs under paragraph (1) or (2) for maintaining employment are met by the earned income deductions in §§ 183.94(1) and 183.95(2).] The Department will pay for transportation and related expenses re-

quired for an individual to engage in approved work or work-related activities up to the maximum allowance established in Appendix A (relating to work or work-related special allowances). [Payment is made] Transportation-related allowances are provided for the least costly type of transportation which is available and practical considering the location and hours of scheduled [employment or training] approved work or work-related activity, the [client's] participant's physical condition and the need to transport children to a child care provider. [Payment for transportation-related costs is] Transportation-related allowances are not [made] provided if the activity is secondary education or an equivalent level of vocational or technical training unless the [person] individual is [a] pregnant [female] or a custodial parent.

(1) *Public transportation.* [Payment is made] Public transportation-related allowances are provided for costs incurred for transportation provided by bus, subway, commuter [or long distance] rail, taxi, [air,] paratransit or other recognized modes of transportation.

(i) [Payment] An allowance for public transportation is the actual cost to the [client] participant up to the maximum amount established by the Department in Appendix A (relating to work and work-related special allowances).

(ii) [Except for air or long distance rail travel, preexpenditure approval is not required.] Verification of the need and the cost of transportation is required [within 30 days of the date the transportation expense was incurred].

(2) *Private transportation.* [Payment is made] Private transportation-related allowances are provided for costs incurred for transportation provided by privately owned vehicles, ride sharing and car or van pools.

(i) [Payment for] An allowance for private transportation provided by a vehicle owned by the [client] participant is the mileage rate established by the Department in Appendix A and the actual cost of parking and highway or bridge tolls up to the maximum [monthly] amount established by the Department in Appendix A.

(ii) [For an allowance provided for the client to ride with a volunteer car and driver, the volunteer driver is paid at] An allowance for transportation provided by a volunteer driver or if the participant is permitted to use another person's vehicle is the mileage rate established by the Department in Appendix A [,] and the actual cost of [the] parking and highway or bridge tolls up to the maximum [monthly] amount established by the Department in Appendix A.

(iii) [For an] An allowance provided for transportation by a car or van pool [,] is the [client receives a] participant's proportionate share of the cost up to the maximum [monthly] amount established by the Department in Appendix A. If the [client's] participant's share is a flat fee, the payment is the actual fee [is

used] up to the maximum [monthly] amount established by the Department in Appendix A.

(3) *Motor vehicle purchase or repair.* When there is no other type of practical transportation available or other available transportation is more expensive, a special allowance may be authorized toward the purchase, down payment [to purchase] or repair of a motor vehicle for an individual to [accept a firm job offer, to prevent the loss of current employment, to attend an approved education or training activity or to transport children to day care while the client is employed or participates] participate in an approved [education or training] work or work-related activity.

(i) The maximum total allowance toward a motor vehicle purchase, down payment and repair is limited to [a] the rate and frequency established by the Department in Appendix A.

* * * * *

(4) *Motor vehicle-related expenses.* The cost of a driver's license, State inspection fee, emission control inspection fee, license plates and vehicle registration fee may be authorized for a participant if they are [needed] required for [an individual to accept a firm job offer, to attend an approved education or training activity, or to transport children to day care while the client participates] participation in an approved [education or training] work or work-related activity.

(i) Payment is made for actual cost up to the maximum allowance and frequency established by the Department in Appendix A

* * * * *

(5) [*Moving/relocation costs.* A special allowance may be granted if an individual is relocating to accept a verified offer of gainful, permanent employment and if the individual has not received a moving allowance for any reason within the previous 12 months.

(i) Payment is not made for moves by unlicensed moving companies except as provided for in § 175.23(b)(3)(i)(C) (relating to requirements).

(ii) The maximum allowance toward moving/relocation costs is limited to the rate established by the Department in Appendix A, in a 12-month period. The 12-month period begins with the first authorization of this allowance.

(iii) Preexpenditure approval is required.

(6) *Lodging and food.* A special allowance toward lodging and food may be granted if an individual has to be away from home one or more nights to apply for employment or an approved education or training activity or to attend training.

(i) Payment for lodging will be made for actual costs up to the rates established for Commonwealth employes by the Office of Administration. These rates will be available upon request at the CAO. When lodging cannot be located with a reasonable effort within these rates, the rates may be exceeded. The rate may also be exceeded if the client is required to stay in a specific hotel or motel. A complete explanation of lodging costs in excess of the rate shall be documented in the CAO record.

(ii) Payment for food will be made for each 24-hour period the individual has to be away from home in accordance with the rates established for Commonwealth employes by the Office of Administration and the Office of the Budget. These rates will be available upon request at the CAO. Overnight travel of less than 24 hours will be divided into 6-hour periods and reimbursed at the fractional day allowance rates. An allowance will not be provided for less than 3 hours. Payment will not be made for meals provided by a prospective employer or included as part of registration fees.

(iii) Preexpenditure approval is required.]

Motor vehicle insurance. The cost of motor vehicle insurance may be authorized if the allowance is required for participation in an approved work or work-related activity.

(i) The allowance is provided only to participants who use their own vehicles.

(ii) Payment is made for actual cost up to the maximum allowance established by the Department in Appendix A.

(iii) Preexpenditure approval is required.

[(d)] (b) *Other expenses related to [employment and training] approved work and work-related activities.* Special allowances may be authorized for other items related to [applying for or accepting employment or for participating] participation in approved [education or training] work or work-related activities. Preexpenditure approval is required. The maximum allowances for these items are subject to the rates and frequencies established by the Department in Appendix A.

(1) *Clothing.* [A special allowance may be authorized for street or business] The Department may refer a participant to other public or nonprofit sources that provide clothing and grooming items at no cost. If these sources are not available or do not have appropriate clothing or other required items, the Department may authorize a special allowance for supportive services for clothing and grooming items [needed to make a client presentable to accept a job or to enter an approved education or training activity or specialized clothing, such as uniforms or safety shoes verified by the employer or training provider as needed for the client to work at a job or] required to participate in an approved [education or training] work or work-related activity.

(2) *Tools and other equipment.* A special allowance may be authorized for tools and other equipment [, such as goggles, helmets and wrenches] which an employer, education, employment or training provider [specifies are necessary] requires for [employment or] participation in an approved work or work-related activity but which are not provided by the employer, education, employment or training provider and are not available under Federal, State or other educational grants.

(3) *Books and supplies.* A special allowance may be authorized for books and supplies [, such as pens, pencils, wristwatches or thermometers] that an employer or employment and training provider

requires for a [client] participant to [attend] participate in an approved [education or training] work or work-related activity if these items are not provided by the employer or training provider and are not available under Federal, State or other educational grants.

(4) *Fees.* A special allowance for supportive services may be authorized for a fee [for taking] to take a test such as a high school equivalency test, a test that is a prerequisite for employment [,] or for registration or enrollment fees required for [a client] an individual to enter an approved [education or training course] work or work-related activity. Tuition is not construed to be a fee.

(5) *Union dues and professional fees.* If payment of union dues or professional fees is a condition of employment, a special allowance for supportive services may be [granted] authorized to participants who receive TANF or GA cash assistance for the initial fee

only and for the period up to the date of the [client's] participant's first pay. A special allowance for supportive services may not be issued to pay for reoccurring fees, such as license fees, even if they are necessary for the individual to maintain employment.

(c) *Amendments to Appendix A.* The Department may amend Appendix A as necessary based on availability of funding and demand for supportive services. Revisions will be published as a notice in the *Pennsylvania Bulletin* for recommended codification in Appendix A.

RESTITUTION

§ 165.91. Restitution.

The Cash Assistance provisions of Chapter 255 (relating to restitution) apply except that the provision for recoupment of an overpayment does not apply to special allowances for supportive services issued to SNAP only participants.

APPENDIX A

[EMPLOYMENT AND TRAINING] WORK AND WORK-RELATED SPECIAL ALLOWANCES

| <i>[Allowance</i> | <i>Frequency</i> | <i>Maximum Allowance</i> |
|--|---|--|
| Child Care | —as required for education, training, job application or job interview | —actual cost subject to the maximum established by the Department, for allowances granted after implementation of the maximum allowances —actual reasonable cost for recipients receiving child care allowances before implementation of the maximum allowances |
| Care of Incapacitated Adults | —as required for education, training, job application or job interview | —actual cost of nonmedical care up to the maximum rates established for infant care |
| Transportation | | |
| <u>Public</u> | —no limit on the number of trips for job interviews, education or training activities | —up to \$250 total per month as determined below: |
| —bus | —for employment, may be authorized for the period up to the date of the first pay | —actual cost except for air and long distance rail travel, which is provided at actual cost at the lowest available rate |
| —subway | | |
| —commuter rail | | |
| —taxi | | |
| —paratransit | | |
| —air | | |
| —long distance rail | | |
| <u>Private</u> | —no limit on the number of trips for job interviews, education or training activities | —\$.12 per mile plus the actual cost of parking and highway and bridge tolls |
| —privately owned vehicle | —for employment, may be authorized for the period up to the date of the first pay | |
| —volunteer car and driver | —same as above | —proportionate share of cost as determined above or flat fee |
| —car or van pool | | |
| Motor Vehicle Purchase and Repair | —once per job —as required for education or training activities | —actual cost up to \$200 for purchase and repair |
| Motor Vehicle Related Expenses | —once per job | —actual cost up to \$200. |
| —driver's license | —as required for education or training activities | |
| —state inspection fee | | |
| —emission control inspection fee | | |
| —license plates | | |
| —vehicle registration fee | | |

| <i>Allowance</i> | <i>Frequency</i> | <i>Maximum Allowance</i> |
|--|---|---|
| Moving/Relocation Costs to Accept Employment | —no more than once in a 12-month period | —actual cost up to \$200. |
| Lodging | —once for each application or interview for a job —as required for education or training | —actual cost subject to the maximum rate established for Commonwealth employees by the Office of Administration |
| Food | —once for each application or interview for a job —as required for education or training | —actual cost subject to the maximum rate established for Commonwealth employees by the Office of Administration and the Office of the Budget. |
| Clothing | —once per job —as required for education or training activities | —actual cost up to \$75. |
| Tools and Equipment | —once per job —as required for education or training activities | —actual cost up to \$2,000. |
| Books and Supplies | —as required for education or training activities | —actual cost up to \$500. |
| Fees | —once per job —as required for education or training activities | —actual cost up to \$250. |
| Union Dues/Professional Fees | —once per job —may be authorized for the period up to date of the first pay | —actual cost up to \$250.] |

| <i>Type of Allowance</i> | <i>TANF or GA</i> | <i>Frequency</i> | <i>SNAP Only</i> | <i>Maximum Allowance</i> |
|---|---|--|------------------|---|
| <u>PUBLIC TRANSPORTATION RELATED ALLOWANCES</u> | | | | —actual cost up to \$1,500 annually |
| Transportation <u>Public</u> —bus —subway —commuter rail —taxi —paratransit | —as required for job interviews, work or work-related activities | —as required for job interviews, work or work-related activities | | |
| | —for employment, may be authorized for the period up to the date of the first pay | —for employment, may be authorized for the period up to the start date | | |
| <u>PRIVATE TRANSPORTATION RELATED ALLOWANCES</u> | | | | —actual cost up to \$1,500 annually |
| Transportation <u>Private</u> —privately-owned vehicle —volunteer car and driver | —as required for job interviews, work or work-related activities —for employment, may be authorized for the period up to the date of the first pay | —as required for job interviews, work or work-related activities —for employment, may be authorized for the period up to the start date | | —mileage reimbursement rate will be set by the Department by notice not to exceed Commonwealth reimbursement rate for actual cost of gasoline, plus the actual cost of parking and highway and bridge tolls |
| Transportation Car or van pool | —as required for job interviews, work or work-related activities —for employment, may be authorized for the period up to the date of the first pay | —as required for job interviews, work or work-related activities —for employment, may be authorized for the period up to the start date | | |

| <i>Type of Allowance</i> | <i>Frequency</i> | <i>SNAP Only</i> | <i>Maximum Allowance</i> |
|---|--|--|--|
| Motor Vehicle Repair | TANF or GA —as required for work or work-related activities | —as required for work or work-related activities or if required to accept employment | |
| Motor Vehicle-Related Expenses —driver’s license —state inspection fee —emission control inspection fee —license plates —vehicle registration fee | —as required for work or work-related activities | —as required for work or work-related activities or if required to accept employment | |
| <u>MOTOR VEHICLE PURCHASE</u> | —as required for work or work-related activities | —as required for work or work-related activities or if required to accept employment | —actual cost for one vehicle up to \$1,500 in a lifetime. |
| <u>MOTOR VEHICLE INSURANCE</u> | —as required for work or work-related activities | —as required for work or work-related activities or if required to accept employment | —actual cost up to \$1,500 in a lifetime. |
| <u>CLOTHING</u> | —as required for work or work-related activities | —as required for work or work-related activities or if required to accept employment | —required clothing or actual cost of clothing up to \$150 annually |
| <u>WORK, EDUCATION AND TRAINING RELATED ALLOWANCES</u> | | | —actual cost up to \$2,000 in a lifetime |
| Tools and Equipment | —as required for work or work-related activities | —as required for work or work-related activities or if required to accept employment | |
| Books and Supplies | —as required for work or work-related activities | —as required for work or work-related activities | |
| Fees | —as required for work or work-related activities | —as required for work or work-related activities or if required to accept employment | |
| Union Dues/Professional Fees | —may be authorized for the period up to date of first pay | —may be authorized for the period up to the start date | |

[Pa.B. Doc. No. 10-717. Filed for public inspection April 23, 2010, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Clarks Creek, et al.; Stream Redesignations

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code §§ 93.9f, 93.9j, 93.9o and 93.9r to read as set forth in Annex A.

This proposal was adopted by the Board at its meeting of February 16, 2010.

A. Effective Date

These proposed amendments are effective upon publication in the *Pennsylvania Bulletin* as final-form rule-making.

B. Contact Persons

For further information, contact Roberta Radel, Chief, Bureau of Water Standards and Facility Regulation, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, (717) 787-9637 or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection (Department) web site (<http://www.depweb.state.pa.us>).

C. Statutory and Regulatory Authority

This proposed rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean

Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001), and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt, and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C. § 1313) sets forth requirements for water quality standards and the Federal regulation in 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. Background of the Proposed Amendments

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits, and best management practices (BMPs)) on individual sources of pollution. The Department may identify candidates for redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies. Organizations, businesses or individuals may submit a rulemaking petition to the Board.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other designations in its ongoing review of water quality standards. In general, HQ and EV waters must be maintained at their existing quality and permitted activities shall ensure the protection of designated and existing uses.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in §§ 93.3 and 93.4 (relating to protected water uses; and Statewide water uses). Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be "redesignated" through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF, prior to a rulemaking. Once the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made "designated" uses, through rulemaking, and be added to the list of uses identified in § 93.9 (relating to designated water uses and water quality criteria).

These streams were evaluated in response to four petitions, as well as requests from the Department's Southcentral Regional Office (SCRO) and the Fish and Boat Commission (Commission), and a corrective amendment by Bureau of Water Standards and Facility Regulation (BWSFR) as follows:

Pine Creek (Schuylkill Co.)—Petition: (Friends of Pine Creek)

Cacoosing Creek (Berks Co.)—SCRO

Unnamed Tributary 00926 to Schuylkill River; locally Spring Mill Run (Montgomery Co.)—Petition: (Steven S. Brown, Chairperson; Whitmarsh Township Environmental Advisory Board)

Unnamed Tributary 28600 to Lackawanna River; locally Clarks Creek (Wayne Co.)—Petition: (Glen Abello)

Unnamed Tributary 07792 to Conestoga River (Lancaster Co.)—Commission

Hammer Creek (Lebanon and Lancaster Co.'s)—Petition: (Heidelberg Township)

Toms Run (Clarion and Forest Co.'s)—Correction (BWSFR)

These regulatory changes were developed as a result of aquatic studies conducted by the BWSFR. The physical, chemical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as HQ or EV waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional Value Waters). Based upon the data and information collected on these waterbodies, the Department recommends the Board adopt this proposed regulation as described in this preamble and as set forth in Annex A.

Copies of the Department's stream evaluation reports for these waterbodies are available on the Department's web site or from the contacts whose addresses and telephone numbers are listed in section B.

The following is a brief explanation of the recommendations for each waterbody:

Pine Creek—Pine Creek (stream code 02269) is a tributary to the Little Schuylkill River in the Delaware River drainage basin. The Pine Creek basin is located in Delano, Rush and Ryan Townships in Schuylkill County. The Pine Creek basin is currently designated CWF, MF and was evaluated for redesignation based on a petition submitted by the Friends of Pine Creek. Pine Creek was evaluated for redesignation as EV waters. Candidate station metrics were compared to Pine Creek (01701), which is an EV, MF stream in Berks County. The reference stream (Pine Creek; 01701) is a tributary to Manatawny Creek. The candidate basin failed to meet the 83% comparison standard and as a result does not qualify for either an EV or HQ-CWF use designation under the Department's regulatory criteria (§ 93.4b(b)(1)(v) and (a)(2)(i)(A)). The Department recommends that Pine Creek basin retain its current CWF, MF designation.

Cacoosing Creek—Cacoosing Creek (stream code 01850) is a tributary to Tulpehocken Creek in the Delaware River basin. The Cacoosing Creek basin is located west of Reading in South Heidelberg, Lower Heidelberg and Spring Townships; and the Boroughs of Sinking Spring and Wernersville in Berks County. The only named tributary to Cacoosing Creek is Little Cacoosing Creek and both were inadvertently omitted from Chapter 93. The fish populations of the Cacoosing Creek basin were sampled during various surveys conducted by Department and Commission staff. While the Cacoosing Creek fishery was very diverse and dominated by species commonly associated with cold-water habitats (trout, blacknose and longnose dace, white sucker and mottled sculpin) the Little Cacoosing Creek fishery was dominated by the banded killifish, a warm water species. The Department recommends that the Cacoosing Creek basin (excluding

the Little Cacoosing Creek subbasin) be designated CWF, MF and the Little Cacoosing Creek basin be designated WWF, MF.

Unnamed Tributary 00926 to Schuylkill River, (locally known as Spring Mill Run)—Spring Mill Run is a tributary to the Schuylkill River in the Delaware River Watershed. The candidate basin is a limestone influenced stream located in Whitmarsh Township, Montgomery County. Spring Mill Run is currently designated WWF, MF and was evaluated for redesignation as a Special Protection water-body in response to a petition from Steven S. Brown (Chairperson of the Whitmarsh Township Environmental Advisory Board). Elk Creek (Centre County) was selected as a reference stream because it is a limestone influenced stream that is designated EV, MF in Chapter 93. All stations on Spring Mill Run had biological condition scores less than 83% of the reference station on Elk Creek. This indicates that Spring Mill Run does not qualify for Special Protection designation under the Department's regulatory criterion (§ 93.4b(b)(1)(v)). The Department recommends that the Spring Mill Run basin be redesignated to CWF, MF. This recommendation is based on the cold water fish populations that are found in Spring Mill Run.

Unnamed Tributary 28600 to Lackawanna River, (locally known as Clarks Creek)—Clarks Creek is a tributary to the Lackawanna River in Clinton Township, Wayne County and it is included in the Susquehanna River Watershed. Clarks Creek basin is currently designated CWF, MF, and was evaluated for redesignation as HQ-CWF based on the petition submitted by Glen Abello. Candidate stream metrics were compared to Dimmick Meadow Brook, which is an EV, MF reference stream. This reference stream is a tributary to Sawkill Creek located in Pike County and has comparable drainage area to Clarks Creek. The Department recommends that the protected use designation of Clarks Creek be changed from CWF, MF to EV, MF based on biological condition scores greater than 92% of the reference station score.

Unnamed Tributary 07792 to Conestoga River (UNT Conestoga River)—UNT Conestoga River is a limestone creek which flows through Earl and East Earl Townships in Lancaster County before entering the Conestoga River which is included in the Susquehanna River drainage basin. The Department conducted an evaluation of UNT Conestoga River in response to a request by the Commission. The current Chapter 93 designated use for UNT Conestoga River is WWF, MF. The UNT Conestoga River supports a cold water fishery as indicated by the available physical, benthic macroinvertebrate, and fish data. The Department recommends that the UNT Conestoga River basin be redesignated CWF, MF.

Hammer Creek—Hammer Creek (stream code 07664) is a tributary to Cocalico Creek in the Susquehanna River drainage basin and is located in Cornwall, South Lebanon and Heidelberg Townships in Lebanon County and Penn and Elizabeth Townships in Lancaster County. Hammer Creek basin is characterized by both freestone and limestone/limestone-influenced streams. The candidate section of Hammer Creek basin from its source to the Speedwell Forge Lake Dam is currently designated HQ-CWF, MF and was evaluated for a redesignation to Trout Stocking (TSF) in response to a petition submitted by Heidelberg Township.

Based on the Department's evaluation of the Hammer Creek basin, the following revisions and redesignations are recommended:

The Department has determined the forested and relatively undisturbed nature of the headwaters of the Hammer Creek basin upstream of the second Rexmont Road Crossing justifies retention of the current HQ-CWF designation. Therefore, the Department recommends no change to the designated use above the second Rexmont Road Crossing.

The remaining portion of the upper Hammer Creek basin from the second Rexmont Road crossing downstream to, but not including UNT 07678, was originally and erroneously designated HQ based on a misclassification of the existing use as indicated by water quality evaluations conducted in the mid-1970s. A review of the historical data, recent field surveys and land use reviews does not establish that an HQ existing use was ever realized for that portion of the basin. The current HQ-CWF designated use of this portion of the upper basin cannot be attained by either implementing effluent limits required under the Federal Clean Water Act, or implementing cost-effective and reasonable best management practices (BMPs) for nonpoint source control. The human caused conditions that prevent the attainment of the designated use cannot be remedied to the level needed for HQ-CWF use attainment. The Department recommends that the Hammer Creek basin from the second Rexmont Road crossing downstream to, but not including UNT 07678 be redesignated as CWF.

Walnut Run enters Hammer Creek below the mouth of UNT 07678. The station on Walnut Run had a biological condition score greater than 92% of the EV reference station on Segloch Run (tributary to Furnace Run; Lancaster County). It is recommended that Walnut Run be redesignated as EV, based on the biological condition scoring criteria in § 93.4b(b)(1)(v).

While Department findings indicate that much of the upper Hammer Creek basin (above the confluence with UNT 07678) does not now and never has displayed HQ existing uses, there are some remaining portions of the lower Hammer Creek basin that exhibit better water quality conditions. These reaches of the Hammer Creek basin are: 1) from and including UNT 07678 downstream to Walnut Run; 2) from Walnut Run to the inlet of Speedwell Forge Lake; and 3) UNT 07671, which is a northern tributary to Speedwell Forge Lake. The condition of the lower basin is better than that of the upper portion of Hammer Creek and, even though portions of the lower basin do not currently meet HQ biological condition scoring criteria, a lack of historical information on the lower basin precludes removal of the HQ designation. The Department recommends that the Hammer Creek basin from and including UNT 07678 downstream to the inlet of Speedwell Forge Lake (except Walnut Run) and the basin of UNT 07671 should retain the current HQ-CWF designation.

Speedwell Forge Lake, constructed in 1966, is characterized by the predominance of warm water conditions and it has historically supported a warm water fish community since it was constructed, and it has been managed by the Commission as such. The Department recommends that Speedwell Forge Lake be redesignated as WWF.

The Department recommends that the entire Hammer Creek basin should maintain its current Migratory Fishes (MF) designated use.

Toms Run—In addition to these recommended revisions, the Department proposes a correction to an error that occurred during the 2000 RBI WQS Triennial Review rulemaking. Toms Run is a tributary to the Clarion River

in Forest County. Toms Run basin (except Little Hefren Run) was redesignated from CWF to EV as a result of the French Creek, *et al.* stream redesignations package. The French Creek package was published as a proposed rulemaking at 27 Pa.B. 1449 (March 22, 1997), and as a final rulemaking at 28 Pa.B. 4510 (September 5, 1998). At the same time, the RBI WQS Triennial Review proposed rulemaking was considered and approved by the Board on June 16, 1998, and published at 28 Pa.B. 4431 (August 29, 1998). The RBI WQS Triennial Review intended to eliminate the site specific criteria for Threshold Odor Number (TON), which affected much of the Clarion River basin (§ 93.9r (relating to drainage list R)), including Toms Run. Unfortunately, while drafting the RBI WQS Triennial final rulemaking, the then recent final redesignation for Toms Run basin was not updated, thereby incorrectly reverting the EV designation back to CWF when the RBI WQS Triennial was published as final rulemaking at 30 Pa.B. 6059 (November 18, 2000). Therefore, the Department recommends that Toms Run basin (except Little Hefren Run) be corrected to EV as approved in the French Creek, *et al.* rulemaking. Little Hefren Run basin will remain CWF.

E. *Benefits, Costs and Compliance*

1. *Benefits*—Overall, the Commonwealth, its citizens and natural resources will benefit from these recommended changes because they provide the appropriate level of protection in order to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of clean water for drinking, recreational opportunities and aquatic life protection. It is important to realize these benefits to ensure opportunity and development continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.

2. *Compliance Costs*—The proposed amendments to Chapter 93 may impose additional compliance costs on the regulated community. These regulatory changes are necessary to improve total pollution control. The expenditures necessary to meet new compliance requirements may exceed that which is required under existing regulations.

Persons conducting or proposing activities or projects must comply with the regulatory requirements relating to designated and existing uses. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating cost for wastewater treatment facilities. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated. The initial costs resulting from the installation of technologically advanced wastewater treatment processes may be offset by potential savings from and increased value of improved water quality through more cost-effective and efficient treatment over time.

3. *Compliance Assistance Plan*—The regulatory revisions have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with

and based on existing Department regulations. The revisions extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act and The Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The proposed amendments will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing uses and revised designated water uses.

4. *Paperwork Requirements*—The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. These regulatory revisions are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification may be required for new or expanded discharges to certain HQ Waters, and consideration of nondischarge alternatives is required for all new or expanded discharges to EV and HQ Waters.

F. *Pollution Prevention*

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged, and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

G. *Sunset Review*

These proposed amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 14, 2010, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Senate and House Environmental Resources and Energy Committees (Committees) for review and comment. In addition to submitting the proposed amendments, IRRC and the Committees have been provided a

detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations 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 Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor prior to final-form publication of the regulations.

I. *Public Comments*

Written Comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments must be received by the Board by June 8,

2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by June 8, 2010. The one page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the proposed amendments will be considered. If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

Electronic Comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by June 8, 2010.

JOHN HANGER,
Chairperson

Fiscal Note: 7-438. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES
CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania
Schuylkill River

| <i>Stream</i> | <i>Zone</i> | <i>County</i> | <i>Water Uses Protected</i> | <i>Exceptions To Specific Criteria</i> |
|---|---|---|-----------------------------|--|
| | | * * * * * | | |
| 5—Plum Creek | Basin, [Unnamed Tributary] UNT at RM 0.45 to Mouth | Berks | CWF, MF | None |
| 4—Cacoosing Creek | Basin, Source to Little Cacoosing Creek | Berks | CWF, MF | None |
| 5—Little Cacoosing Creek | Basin | Berks | WWF, MF | None |
| 4—Cacoosing Creek | Little Cacoosing Creek to Mouth | Berks | CWF, MF | None |
| 3—Tulpehocken Creek | Basin, T 921 to Mouth | Berks | WWF, MF | None |
| | | * * * * * | | |
| 3—Valley Creek | Basin | Montgomery-Chester | EV, MF | None |
| 3—UNTs to Schuylkill River | Basins, Valley Creek to [Head of Tide] UNT 00926 at RM 18.9 | [Philadelphia] Montgomery | WWF, MF | None |
| 3—Trout Creek | Basin | Montgomery | WWF, MF | None |
| | | * * * * * | | |
| 3—Arrowmink Creek | Basin | Montgomery | WWF, MF | None |
| 3—UNT 00926 at RM 18.9 (locally Spring Mill Run) | Basin | Montgomery | CWF, MF | None |

| <i>Stream</i> | <i>Zone</i> | <i>County</i> | <i>Water Uses Protected</i> | <i>Exceptions To Specific Criteria</i> |
|----------------------------|--|-------------------------|-----------------------------|--|
| 3—UNTs to Schuylkill River | Basins, UNT 00926 downstream to Head of Tide | Montgomery-Philadelphia | WWF, MF | None |
| 3—Sawmill Run | Basin | Montgomery | WWF, MF | None |
| | | | | * * * * * |

§ 93.9j. Drainage List J.

**Susquehanna River Basin in Pennsylvania
Lackawanna River**

| <i>Stream</i> | <i>Zone</i> | <i>County</i> | <i>Water Uses Protected</i> | <i>Exceptions To Specific Criteria</i> |
|--|---|-------------------|-----------------------------|--|
| | | | | * * * * * |
| 2—Lackawanna River | Main Stem, Confluence East and West Branches to SR 0347 Bridge at Dickson City | Lackawanna | HQ-CWF, MF | None |
| 3—[Unnamed Tributaries] UNTs to Lackawanna River | Basins, Confluence of East and West Branches to [SR 0347 Bridge at Dickson City] Clarks Creek | Susquehanna-Wayne | CWF, MF | None |
| 3—Brace Brook | Basin | Susquehanna | CWF, MF | None |
| 3—UNT 28600 at RM 35.54 (locally Clarks Creek) | Basin | Wayne | EV, MF | None |
| 3—UNTs to Lackawanna River | Basins, Clarks Creek to SR 0347 Bridge at Dickson City | Wayne-Lackawanna | CWF, MF | None |
| 3—Wilson Creek | Basin | Lackawanna | CWF, MF | None |
| | | | | * * * * * |

§ 93.9o. Drainage List O.

**Susquehanna River Basin in Pennsylvania
Susquehanna River**

| <i>Stream</i> | <i>Zone</i> | <i>County</i> | <i>Water Uses Protected</i> | <i>Exceptions To Specific Criteria</i> |
|---|--|-----------------|-----------------------------|--|
| | | | | * * * * * |
| 2—Wilson Run | Basin | York | WWF, MF | None |
| 2—Conestoga River | [Main Stem] Basin, Source to UNT 07792 at RM 43.05 | Lancaster | WWF, MF | None |
| 3—UNT 07792 to Conestoga River at RM 43.05 | Basin | Lancaster | CWF, MF | None |
| 2—Conestoga River | Main Stem, UNT 07792 at RM 43.05 to Mouth | Lancaster | WWF, MF | None |
| 3—[Unnamed Tributaries] UNTs to Conestoga River | Basins, UNT 07792 to Mouth | Berks-Lancaster | WWF, MF | None |
| 3—Muddy Creek | Main Stem, Source to Little Muddy Creek | Lancaster | TSE, MF | None |
| | | | | * * * * * |
| 4—Middle Creek | Basin, Furnace Run to Mouth | Lancaster | WWF, MF | None |

| <i>Stream</i> | <i>Zone</i> | <i>County</i> | <i>Water Uses Protected</i> | <i>Exceptions To Specific Criteria</i> |
|----------------|--|-------------------------------------|-----------------------------|--|
| 4—Hammer Creek | Basin, Source to [Speedwell Forge Lake Dam] second Rexamont Road crossing (downstream of the two former water supply reservoirs) | [Lancaster] Lebanon | HQ-CWF, MF | None |
| 4—Hammer Creek | Basin, second Rexamont Road crossing to but not including UNT 07678 at RM 14.2 | Lebanon | CWF, MF | None |
| 4—Hammer Creek | Basin, from and including UNT 07678 downstream to Walnut Run | Lancaster | HQ-CWF, MF | None |
| 5—Walnut Run | Basin | Lancaster | EV, MF | None |
| 4—Hammer Creek | Basin, Walnut Run to inlet of Speedwell Forge Lake | Lancaster | HQ-CWF, MF | None |
| 4—Hammer Creek | Basin, Inlet of Speedwell Forge Lake to UNT 07671 at RM 8.8 | Lancaster | WWF, MF | None |
| 5—UNT 07671 | Basin | Lancaster | HQ-CWF, MF | None |
| 4—Hammer Creek | Basin, UNT 07671 to Speedwell Forge Lake Dam | Lancaster | WWF, MF | None |
| 4—Hammer Creek | Basin, Speedwell Forge Lake Dam to Mouth | Lancaster | TSF, MF | None |

* * * * *

§ 93.9r. Drainage List R.

**Ohio River Basin in Pennsylvania
Clarion River**

| <i>Stream</i> | <i>Zone</i> | <i>County</i> | <i>Water Uses Protected</i> | <i>Exceptions To Specific Criteria</i> |
|---------------------|---|----------------------------------|-----------------------------|--|
| | | | | |
| 4—Henry Run | Basin | Forest | CWF | None |
| 4—Toms Run | Basin, Source to Little Hefren Run | [Forest] Clarion | [CWF] EV | None |
| 5—Little Hefren Run | Basin | Clarion | CWF | None |
| 4—Toms Run | Basin, Little Hefren Run to Mouth | Forest | EV | None |
| 4—Cather Run | Basin | Clarion | HQ-CWF | None |

* * * * *

[Pa.B. Doc. No. 10-718. Filed for public inspection April 23, 2010, 9:00 a.m.]

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE CH. 5]

Assistance of Unlicensed Supportive Personnel

The State Board of Chiropractic (Board) proposes to amend its regulations to add § 5.54 (relating to assistance by unlicensed supportive personnel), to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 302(3) and 601 of the Chiropractic Practice Act (act) (63 P. S. §§ 625.302(3) and 625.601).

Background and Need for the Amendment

Under section 601 of the act, a licensed chiropractor may utilize “the assistance of unlicensed supportive personnel performing under the direct on-premises supervision of a licensed chiropractor.” That section also prohibits a licensed chiropractor from delegating “any activity or duty to such unlicensed individuals which requires formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor.” This rulemaking is intended to identify the more common

activities and duties that unlicensed supportive personnel may perform under the supervision of a licensed chiropractor and to identify those activities and duties that may not be delegated to supportive personnel. Those activities and duties not listed in the regulation would be permitted or prohibited in accordance with the statutory standard.

Description of the Proposed Amendments

The proposed rulemaking would first define in § 5.54(a) the term “direct supervision” as supervision provided without any intermediate supervision and define the term “unlicensed supportive personnel” as any person not licensed to practice chiropractic who is regularly employed by a chiropractor to assist a chiropractor. The proposed rulemaking would provide in § 5.54(b) that a licensed chiropractor may utilize the assistance of unlicensed supportive personnel as authorized in the regulation and that the chiropractor is professionally responsible for the actions of the supportive personnel. Under proposed § 5.54(f), the chiropractor must be physically on the premises and able to intervene whenever necessary while utilizing the assistance of unlicensed supportive personnel. Under proposed § 5.54(g), supportive personnel must be qualified by training, education or experience to perform any activity or duty that is delegated. Proposed § 5.54(h) would require the licensed chiropractor to make a diagnosis and evaluation, specify the treatment regimen and perform any aspect of the procedure that may not be delegated to unlicensed supportive personnel.

Proposed § 5.54(c) would list those duties and activities that the Board has recognized do not require formal education or training in the practice of chiropractic or the knowledge or skill of a licensed chiropractor and could be performed by unlicensed supportive personnel under the direct on-premises supervision of a licensed chiropractor. Under proposed § 5.54(c)(1), unlicensed supportive personnel could record the patient’s chief complaint and presenting illness or condition; assist the patient in completing office forms; obtain pre-authorization for diagnostic testing; obtain and record the patient’s vital signs; develop x-rays; instruct and monitor therapeutic exercises; help complete a physical activity readiness questionnaire; help prepare the patient for diagnostic studies; assist the chiropractor in performing electrocardiograms; assist in applying a cast, brace, appliance or orthotic; prepare laboratory specimens; perform range of motion testing; perform muscle testing; relay home care instructions to the patient; relay instructions for cast, brace, appliance or orthotic; elicit the patient’s activities of daily living; set up and break down rehabilitation equipment; use rehabilitation equipment; clear rooms and clean/sterilize equipment; maintain the patient file and prepare for therapeutic encounter; perform extremity measurements; perform postural screening; render first aid; and perform therapeutic exercises and activities to include provision of direct one-on-one contact or constant attendance necessary to achieve the desired therapeutic results of the exercise. Because only a chiropractor certified to do so may perform adjunctive procedures, proposed § 5.54(c)(2) would separately list those adjunctive procedure activities or duties that may be performed by unlicensed supportive personnel under the direct on-premises supervision of a licensed chiropractor certified to use adjunctive procedures. Under proposed § 5.54(c)(2), unlicensed supportive personnel could: apply hot packs and cryotherapy; provide the contact required for the provision of whirlpool therapy and perform any necessary setup of equipment; perform electrical stimulation therapy to include provision of the supervision or con-

stant attendance necessary during delivery of the therapy, placement of the electrodes and necessary setup of the electrical stimulation unit; perform ultrasound therapy to include provision of the supervision or constant attendance necessary during delivery of the therapy, actual delivery of the ultrasound therapy, and necessary setup of the ultrasound unit; perform mechanical traction therapy to include provision of the supervision necessary during delivery of the therapy, placement of the patient and necessary setup of the traction unit; perform therapeutic laser therapy to include provision of the supervision or constant attendance necessary during delivery of the therapy, actual delivery of the laser therapy, and necessary setup of the laser therapy unit; and perform other therapeutic modalities classifiable as adjunctive procedures to include provision of the supervision or constant attendance necessary during delivery of the therapy, actual application of the therapy when required, and necessary setup of the laser therapy unit.

Proposed § 5.54(d) would list those duties and activities that the Board has recognized require formal education or training in the practice of chiropractic or the knowledge or skill of a licensed chiropractor and may not be delegated to unlicensed supportive personnel. Under proposed § 5.54(d)(1), unlicensed supportive personnel may not perform chiropractic adjustment or manipulation, evaluate or manage a treatment plan, discharge a patient, order x-rays or other diagnostic tests, refer a patient to another practitioner, or perform venipuncture. Under proposed § 5.54(d)(2), unlicensed supportive personnel may not place needle electrodes.

Because this list is not exhaustive, under proposed § 5.54(e) any activity or duty not listed in the regulation would be evaluated under the terms of section 601 of the act to determine whether the activity or duty could be delegated to unlicensed supportive personnel.

Fiscal Impact and Paperwork Requirements

The proposed regulation will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The regulation will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 8, 2010, 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 Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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 which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final

publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, by mail at P. O. Box 2649, Harrisburg, PA 17105-2649, or by email at st-chiropractic@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Use reference No. 16A-4316 (assistance by unlicensed supportive personnel), when submitting comments.

KATHLEEN G. McCONNELL, D. C.,
Chairperson

Fiscal Note: 16A-4316. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 5. STATE BOARD OF CHIROPRACTIC

Subchapter E. MINIMUM STANDARDS OF PRACTICE

§ 5.54. Assistance by unlicensed supportive personnel.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Direct supervision—Supervision without any intermediate supervisory person.

Unlicensed supportive personnel—A person not licensed by the Board to practice chiropractic who is regularly employed by a licensed chiropractor or chiropractic practice to assist one or more licensed chiropractors.

(b) A licensed chiropractor may utilize the assistance of unlicensed supportive personnel as authorized in this section. The chiropractor is professionally responsible for the actions of unlicensed supportive personnel providing assistance under this section.

(c) Performing the activities or duties identified in this subsection does not require formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor.

(1) A licensed chiropractor may delegate the following activities or duties to unlicensed supportive personnel performing under the chiropractor's direct on-premises supervision:

- (i) Recording patient's chief complaint and presenting illness or condition.
- (ii) Assisting patient in completing office forms.
- (iii) Obtaining preauthorization for diagnostic testing.
- (iv) Obtaining and recording a patient's vital signs.
- (v) Developing x-rays.
- (vi) Instructing and monitoring therapeutic exercises in the office.

(vii) Helping complete physical activity readiness questionnaire.

(viii) Helping prepare patient for diagnostic studies.

(ix) Assisting the chiropractor in performing an electrocardiogram.

(x) Assisting in applying a cast, brace, appliance or orthotic.

(xi) Preparing laboratory specimens.

(xii) Performing range of motion testing.

(xiii) Performing muscle testing.

(xiv) Relaying home care instructions to patients.

(xv) Relaying instructions for cast, brace, appliance or orthotic.

(xvi) Eliciting patient's activities of daily living.

(xvii) Setting up and breaking down rehabilitation equipment.

(xviii) Using rehabilitation equipment.

(xix) Clearing rooms and cleaning or sterilizing equipment.

(xx) Maintaining patient file and preparing for therapeutic encounter.

(xxi) Performing extremity measurements.

(xxii) Performing postural screening.

(xxiii) Rendering first aid.

(xxiv) Performing therapeutic exercises and activities to include provision of direct one-on-one contact or constant attendance necessary to achieve the desired therapeutic results of the exercise.

(2) A licensed chiropractor who is certified to use adjunctive procedures may delegate the following adjunctive procedures activities or duties to unlicensed supportive personnel performing under the chiropractor's direct on-premises supervision:

(i) Applying hot packs and cryotherapy.

(ii) Providing the contact required for the provision of whirlpool therapy and performing any necessary setup of equipment.

(iii) Performing electrical stimulation therapy to include provision of the supervision or constant attendance necessary during delivery of the therapy, placement of the electrodes, and necessary setup of the electrical stimulation unit.

(iv) Performing ultrasound therapy to include provision of the supervision or constant attendance necessary during delivery of the therapy, actual delivery of the ultrasound therapy, and necessary setup of the ultrasound unit.

(v) Performing mechanical traction therapy to include provision of the supervision necessary during delivery of the therapy, placement of the patient and necessary setup of the traction unit.

(vi) Performing therapeutic laser therapy to include provision of the supervision or constant attendance

necessary during delivery of the therapy, actual delivery of the laser therapy, and necessary setup of the laser therapy unit.

(vii) Performing other therapeutic modalities classifiable as adjunctive procedures to include provision of the supervision or constant attendance necessary during delivery of the therapy, actual application of the therapy when required, and necessary setup of the laser therapy unit.

(d) Performing the activities or duties identified in this subsection requires formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor.

(1) A chiropractor may not delegate the following activities or duties to unlicensed supportive personnel:

- (i) Performing chiropractic adjustment or manipulation.
- (ii) Evaluating or managing a treatment plan.
- (iii) Discharging a patient.
- (iv) Ordering x-rays or other diagnostic tests.
- (v) Interpreting x-rays or other diagnostic tests.
- (vi) Referring a patient to another practitioner.
- (vii) Performing venipuncture.

(2) A chiropractor may not delegate the following adjunctive procedure activities or duties to unlicensed supportive personnel: placing needle electrodes.

(e) Unlicensed supportive personnel may assist a licensed chiropractor by performing an activity or duty not identified in subsection (b) or (c) if the activity or duty does not require formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor and the unlicensed supportive personnel act in accordance with the other requirements of this section. A chiropractor may not delegate to unlicensed supportive personnel any activity or duty not identified in subsection (b) or (c) if the activity or duty requires formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor.

(f) An unlicensed supportive person may perform an activity or duty delegated by a chiropractor under this section only while the chiropractor supervising the unlicensed supportive person is physically present on the premises and able to intervene whenever necessary.

(g) A chiropractor may not permit an unlicensed supportive person to perform any activity that the supportive person is not qualified by training, education or experience to perform.

(h) The licensed chiropractor shall make the diagnosis and evaluation, specify the treatment regimen, and perform any aspects of the procedures that may not be delegated to unlicensed supportive personnel.

[Pa.B. Doc. No. 10-719. Filed for public inspection April 23, 2010, 9:00 a.m.]

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 47, 48 AND 49]

Licensure by Endorsement; Hours of Supervised Clinical Experience

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to amend §§ 47.12c and 47.12d (relating to licensed clinical social worker; and standards for supervisors) and to adopt §§ 47.16, 48.17 and 49.18 (relating to licensure by endorsement), to read as set forth in Annex A.

Statutory authority

The act of July 9, 2008 (P.L. 929, No. 68) (Act 68) amended section 7(d) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act), 63 P.S. § 1907(d) to reduce the number of hours of supervised clinical experience required as a condition of licensure as a licensed clinical social worker from 3,600 to 3,000. Act 68 also added section 10.1 to the act (63 P.S. § 1910.1), to establish licensure by endorsement for clinical social workers, marriage and family therapists and professional counselors. Section 4 of Act 68 directs the Board to promulgate regulations to implement the addition of section 10.1 of the act within 3 years of the effective date of the act. The effective date of the act was September 7, 2008. Section 6(2) of the act, (63 P.S. § 1906(2)), authorizes the Board to adopt and, from time to time, revise rules and regulations as may be necessary to carry into effect the provisions of the act.

Background and Purpose

The amendments are required to implement licensure by endorsement for clinical social workers, marriage and family therapists and professional counselors as required under section 10.1 of the act and to amend existing regulations to conform to the recent amendments to the act relating to the number of hours of supervised clinical experience required as a condition of licensure as a licensed clinical social worker.

Description of the Amendments

Hours of Supervised Clinical Experience

The Board proposes to amend § 47.12c(a) to reduce the number of hours of supervised clinical experience from 3,600 to 3,000 hours to conform to the recent amendment to the act. In addition, subsection (b)(2) is proposed to be amended to reduce the number of hours that must be supervised by a licensed clinical social worker or, if the supervision occurred prior to January 1, 2006, by a licensed social worker who practiced as a clinical social worker, from 1,800 hours to no less than 1,500 hours (half of the required hours). Subsection (b)(9) also proportionally reduces the number of hours so that no less than 500 hours and no more than 1,500 may be credited in any 12-month period. These amendments continue the current regulatory scheme, while implementing the reduction in the total number of hours of supervised clinical experience from 3,600 to 3,000 as mandated by the amendment

to the act. The Board also proposes to amend subsection (c) to provide for consideration of those applicants that have already completed more than 1,500 hours of supervised clinical experience within a 12-month period prior to the effective date of these regulations in final form. For those applicants, the Board will credit up to 1,800 hours. This will ensure there will be no adverse impact upon the applicant or loss of credit hours for those hours already completed in compliance with the existing regulations.

Section 47.12d was likewise amended to reflect the decrease from 3,600 to 3,000 of supervised experience.

Licensure by Endorsement

The Board proposes to adopt § 47.16 to set forth requirements for licensure by endorsement for clinical social workers. To qualify for licensure by endorsement, a clinical social worker shall: (1) satisfy the general requirements for licensure; (2) hold a master's degree in social work or social welfare or a doctoral degree in social work from an accredited school of social work; (3) have passed a clinical social work examination acceptable to the Board; (4) hold a clinical social work license that is in good standing from another state; and (5) have completed a minimum of 3,000 hours of supervised clinical experience that conforms to the requirements of the state in which the applicant is licensed.

Section 48.17 would set forth similar requirements for licensure by endorsement of marriage and family therapists. To qualify for licensure by endorsement, a marriage and family therapist shall: (1) satisfy the general requirements for licensure; (2) meet the educational requirements set forth in the act and regulations; (3) hold a marriage and family therapy license in good standing from another state; (4) have completed a minimum of 3,000 hours of supervised clinical experience that conforms to the requirements of the state in which the applicant is licensed; and (5) have been actively engaged in the practice of marriage and family therapy for 5 of the last 7 years immediately preceding the filing of the application for licensure by endorsement.

Finally, § 49.18 would set forth the requirements for licensure by endorsement for professional counselors. To qualify for licensure by endorsement, a professional counselor shall: (1) satisfy the general requirement for licensure; (2) meet the educational requirements set forth in the act and regulations; (3) hold a professional counselor license in good standing from another state; (4) have completed a minimum of 3,000 hours of supervised clinical experience that conforms to the requirements of the state in which the applicant is licensed; and (5) have been engaged in the practice of professional counseling for 5 of the last 7 years immediately preceding the filing of the application for licensure by endorsement.

Fiscal impact and Paperwork Requirements

The proposed amendments will require the Board to create new application forms for licensure by endorsement; however, the proposed amendments should not create additional paperwork for the private sector with the exception of those individuals who apply for licensure by endorsement. The proposed amendments should not result in any additional legal, accounting or reporting requirements for the Commonwealth or the regulated community.

Sunset Date

The Board continuously monitors the effectiveness of its regulations 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 April 8, 2010, the Board submitted a copy of these proposed amendments and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding these proposed amendments to Cynthia K. Montgomery, Regulatory Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Use reference No. 16A-6916, Licensure by Endorsement; House of Supervised Clinical Experience, when submitting comments.

DONNA A. TONREY, LMFT,
Chairperson

Fiscal Note: 16A-6916. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

LICENSURE

§ 47.12c. Licensed clinical social worker.

(a) *Conditions for licensure.* To be issued a license to hold oneself out as a licensed clinical social worker, an applicant shall provide proof satisfactory to the Board, that the applicant has met the following conditions:

* * * * *

(5) Completed at least [**3 years or 3,600**] **3,000** hours of supervised clinical experience meeting the criteria in subsection (b) after completion of the master's degree in social work. Supervision for the clinical experience shall be provided by a supervisor as defined in §§ 47.1 and 47.1a (relating to definitions; and qualifications for supervisors).

(b) *Supervised clinical experience.* Experience acceptable to the Board means experience as a supervisee in a setting that is organized to prepare the applicant for the

practice of clinical social work consistent with the applicant's education and training [.], and conforms to the following:

* * * * *

(2) Supervision for the clinical experience shall be provided by a supervisor as defined in §§ 47.1 and 47.1a. However, [1,800] at least 1,500 hours shall be supervised by a supervisor meeting the qualifications in § 47.1a(1) and (3).

* * * * *

(9) The supervised clinical experience shall be completed in no less than 2 years and no more than 6 years, except that [no less than 600] at least 500 hours and no more than [1,800] 1,500 hours may be credited in any 12-month period.

(c) [Supervised clinical experience obtained within 5 years prior to March 2, 2002.

(1) For hours of supervised clinical experience obtained within 5 years prior to March 2, 2002, the applicant shall present evidence of having acquired at least one-half of those hours under the supervision of a clinical social worker. The applicant shall also have acquired hours of supervision at a ratio of 2 hours of supervision per 40 hours of supervised clinical experience, one-half of which may be in group supervision and at least one-half of which shall be provided by a clinical social worker.

(2) Supervised clinical experience obtained under this subsection is not subject to § 47.12d (relating to standards for supervisors).] Supervised clinical experience obtained within any 12-month period prior to _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.). An applicant having completed more than 1,500 hours, but not more than 1,800 hours, of supervised clinical experience in a 12-month period prior to _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), will be given credit for up to 1,800 hours of supervised clinical experience actually completed during that 12-month period.

§ 47.12d. Standards for supervisors.

Supervisors, and those to whom supervisory responsibilities are delegated, under § 47.12c(a)(5) (relating to licensed clinical social worker) shall comply with the standards in this section. Supervisors will be asked to attest to compliance on the verification of experience form which shall accompany the supervisee's application for licensure. The Board reserves the right to require a supervisor by documentation or otherwise to establish to the Board's satisfaction that compliance occurred.

* * * * *

(6) The supervisor shall be empowered to recommend the interruption or termination of the supervisee's activities in providing services to a client/patient and, if necessary, to terminate the supervisory relationship. Any hours accumulated for activities not approved by the supervisor will not count toward satisfying the [3,600] 3,000 hours of supervised experience.

* * * * *

(Editor's Note: The following text is new and has been printed in regular print to enhance readability.)

§ 47.16. Licensure by endorsement.

To be issued a license by endorsement without examination as a licensed clinical social worker, an applicant shall provide proof satisfactory to the Board, that the applicant has met the following conditions:

(1) Satisfied the general requirements for licensure of § 47.12 (relating to qualifications for licensure).

(2) Holds a master's degree in social work or social welfare or a doctoral degree in social work from a school accredited by the Council on Social Work Education. An applicant who is a graduate of a foreign school shall submit to the Board an evaluation of foreign credentials performed by the Council on Social Work Education, which assesses the foreign credentials to be the equivalent of the curriculum policy of an accredited graduate school during the same time period, that is, as meeting the requirements of having earned a master's degree in social work or social welfare from an accredited school.

(3) Passed a clinical social work examination acceptable to the Board. The Board will accept an applicant's examination grades taken in another jurisdiction, as furnished through the professional examination reporting service or from the jurisdiction that administered the examination. The applicant shall demonstrate that the examination taken in the other jurisdiction is similar to the one offered by the Commonwealth, and that the applicant passed the examination with a grade at least equal to the passing grade set by the Commonwealth.

(4) Holds a clinical social work license that is in good standing from another state. The applicant shall provide a letter from the other jurisdiction's licensing authority where the clinical social worker is licensed certifying licensure and reporting any disciplinary history.

(5) Demonstrates to the Board's satisfaction that the applicant has completed a minimum of 3,000 hours of supervised clinical experience that conforms to the requirements of the state in which the applicant is currently licensed.

CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS

LICENSURE

§ 48.17. Licensure by endorsement.

To be issued a license by endorsement without examination as a marriage and family therapist, an applicant shall provide proof satisfactory to the Board, that the applicant has met the following conditions:

(1) Satisfied the general requirements for licensure of § 48.12 (relating to general qualifications for licensure).

(2) Satisfied the educational requirements in section 7(e)(2) of the act (63 P. S. § 1907(e)(2)) and § 48.13(a)(3) (relating to licensed MFT).

(3) Holds a marriage and family therapy license that is in good standing from another state. The applicant shall provide a letter from the other jurisdiction's licensing authority where the marriage and family therapist is licensed certifying licensure and reporting any disciplinary history.

(4) Demonstrates to the Board's satisfaction that the applicant has completed a minimum of 3,000 hours of supervised clinical experience that conforms to the licensure requirements of the state in which the applicant is currently licensed.

(5) Demonstrates to the Board's satisfaction that the applicant has, at a minimum, been actively engaged in the practice of marriage and family therapy for 5 of the last 7 years immediately preceding the filing of the application for licensure by endorsement with the Board.

CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS

LICENSE

§ 49.18. Licensure by endorsement.

To be issued a license by endorsement without examination as a professional counselor, an applicant shall provide proof satisfactory to the Board, that the applicant has met the following conditions:

(1) Satisfied the general requirements for licensure of § 49.12 (relating to general qualifications for licensure).

(2) Satisfied the educational requirements in section 7(f)(2) of the act (63 P. S. § 1907(f)(2)) and § 49.13(a)(3) (relating to licensed professional counselor).

(3) Holds a professional counselor license that is in good standing from another state. The applicant shall provide a letter from the other jurisdiction's licensing authority where the professional counselor is licensed certifying licensure and reporting any disciplinary history.

(4) Demonstrates to the Board's satisfaction that the applicant has completed a minimum of 3,000 hours of supervised clinical experience that conforms to the requirements of the state in which the applicant is currently licensed.

(5) Demonstrates to the Board's satisfaction that the applicant has, at a minimum, been actively engaged in the practice of professional counseling for 5 of the last 7 years immediately preceding the filing of the application for licensure by endorsement with the Board.

[Pa.B. Doc. No. 10-720. Filed for public inspection April 23, 2010, 9:00 a.m.]