

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 157 AND 710]

Transfer of Regulations

The Department of Drug and Alcohol Programs and the Department of Health jointly submit this notice for the purpose of renumbering certain existing regulations. This renumbering has been made necessary by the act of July 9, 2010 (P. L. 348, No. 50) (Act 50).

Among other things, Act 50 transferred regulations of the Department of Health regarding drug and alcohol services to the Department of Drug and Alcohol Programs.

Therefore, in recognition of section 13 of Act 50, the Department of Drug and Alcohol Programs and the Department of Health hereby request the Legislative Reference Bureau to transfer 28 Pa. Code Chapter 157 to 28 Pa. Code Chapter 710:

TITLE 28. HEALTH AND SAFETY

PART IV. Health Facilities

Subpart B. General and Special Hospitals

Chapter 157. [Reserved and Renumbered]

PART V. Department of Drug and Alcohol Programs

Chapter 710. Drug and Alcohol Services

TABLE OF REGULATIONS TO BE TRANSFERRED

The following chapters are transferred within Title 28:

| <i>Former Pa. Code Reference</i> | <i>New Pa. Code Reference</i> |
|----------------------------------|-------------------------------|
| Title 28, Chapter 157 | Title 28, Chapter 710 |

GAROLD E. TENNIS,
Secretary

Department of Drug and Alcohol Programs

MICHAEL WOLF,
Secretary

Department of Health

[Pa.B. Doc. No. 14-2136. Filed for public inspection October 17, 2014, 9:00 a.m.]

DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS

[28 PA. CODE CH. 701]

General Provisions

The Department of Drug and Alcohol Programs (Department) amends §§ 701.1, 701.3 and 701.13 (relating to general definitions; legal base; and contact person) to read as set forth in Annex A. The purpose of this final-omitted rulemaking is to bring clarity and consistency to the regulations.

This final-omitted rulemaking is a matter of housekeeping to bring these regulations in line with the act of July 9, 2010 (P. L. 348, No. 50) (Act 50). Effective July 1, 2011, the responsibility for all obligations related to drug and alcohol in this Commonwealth was transferred from the Department of Health to the Department.

This final-omitted rulemaking amends Chapter 701 (relating to general provisions) to clarify that the Department is the Commonwealth agency responsible for drug and alcohol treatment and prevention in this Commonwealth. Specifically, this final-omitted rulemaking changes the heading of Part V from “Drug and Alcohol Facilities and Services” to “Department of Drug and Alcohol Programs,” amends the definition of “Department” from the Department of Health to the Department in § 701.1, adds Act 50 to § 701.3 and updates the contact person in § 701.13 from the Department of Health to the Department.

A. *Effective Date*

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

B. *Contact Persons*

For further information concerning the final-omitted rulemaking, contact Ronald G. Young, Director, Division of Program Licensure, 132 Kline Plaza, Harrisburg, PA, 17104, (717) 783-8675; or Tawny K. Mummah, Deputy General Counsel, Counsel to the Department of Drug and Alcohol Programs, 333 Market Street, 17th Floor, Harrisburg, PA 17101, (717) 783-6563. The final-omitted rulemaking is electronically available on the Department’s web site at www.ddap.pa.gov.

C. *Statutory Authority*

This final-omitted rulemaking is authorized under Act 50, which created the Department. Specifically, Act 50 added section 2301-A of The Administrative Code of 1929 (71 P. S. § 613.1) and provided the Department with the power to promulgate rules and regulations necessary to carry out the provisions in paragraph (9) of this section.

D. *Background and Purpose*

Act 50 transferred the powers, duties and functions of the Department of Health concerning drug or alcohol abuse to the Department. The goal of this final-omitted rulemaking is to provide clarity and consistency to the regulations.

The Department is satisfied there is no reasonable alternative to proceeding with this final-omitted rulemaking. The Department is also satisfied the final-omitted rulemaking meets the requirements of Executive Order No. 1996-1, “Regulatory Review and Promulgation.”

E. *Summary of Regulatory Requirements*

The final-omitted rulemaking is needed to make the drug and alcohol regulations consistent with Act 50 and is in response to comments to the Department’s proposed rulemaking 74-1 by the Independent Regulatory Review Commission (IRRC). When reviewing the Department’s proposed rulemaking to amend Chapter 709 (relating to standards for licensure of freestanding treatment facilities), IRRC raised a concern that there was a need for clarity in the drug and alcohol regulations. See 44 Pa.B. 6660 (October 18, 2014) for final-form rulemaking 74-1.

Citizens in this Commonwealth will benefit as the regulations will now clearly reflect the General Assembly's decision to make the Department the agency responsible for drug and alcohol treatment and prevention.

This final-omitted rulemaking changes the heading of Part V from "Drug and Alcohol Facilities and Services" to "Department of Drug and Alcohol Programs."

The definition of "Department" in § 701.1 is amended to change the Department of Health to the Department.

Act 50 is added to the list of authorizing statutes in § 701.3.

The contact person in § 701.13 is changed from the Department of Health to the Department.

F. Benefits, Cost and Compliance

The sole benefit of this final-omitted rulemaking is to provide clarity and consistency between Act 50 and the drug and alcohol regulations. There is no cost or compliance associated with this final-omitted rulemaking because it merely reflects the transfer of the obligation for drug and alcohol treatment and prevention from the Department of Health to the Department.

G. Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on July 8, 2014, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form IRRC and to the Chairpersons of the House Human Services Committee and the Senate Committees on Public Health and Welfare. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on September 3, 2014, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 4, 2014, and approved the final-omitted rulemaking.

Findings

The Department finds that:

(1) The adoption of the final-omitted rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

(2) Under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), the Department finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because it is in the public interest to expedite these amendments.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 28 Pa. Code Chapter 701, are amended by amending §§ 701.1, 701.3 and 701.13 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(d) The Secretary of the Department shall certify and deposit under this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

GAROLD E. TENNIS,
Secretary

(Editor's Note: See 44 Pa.B. 6660 (October 18, 2014) for a final-form rulemaking by the Department relating to this final-omitted rulemaking. See 44 Pa.B. 6658 (October 18, 2014) for a document transferring Department regulations.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 6051 (September 20, 2014).)

Fiscal Note: 74-2. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 28. HEALTH AND SAFETY
PART V. DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS**

CHAPTER 701. GENERAL PROVISIONS

Subchapter A. DEFINITIONS

§ 701.1. General definitions.

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

* * * * *

Department—The Department of Drug and Alcohol Programs of the Commonwealth.

* * * * *

§ 701.3. Legal base.

This part is issued under the authority contained in the following statutes:

(1) The act, as transferred to the Department by Reorganization Plan No. 4 of 1981 (P. L. 610) (71 P. S. § 759-4).

(2) The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

(3) Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1001—1088), as transferred by Reorganization Plan No. 2 of 1977 (P. L. 372) (71 P. S. § 757-2) and No. 4 of 1981 (71 P. S. § 757-2).

(4) The Health Care Facilities Act (35 P. S. § 448.101—448.904b).

(5) The act of July 9, 2010 (P. L. 348, No. 50), codified in section 2301-A of The Administrative Code of 1929 (71 P. S. § 613.1).

Subchapter B. EXCEPTIONS

§ 701.13. Contact person.

Questions concerning this part should be directed to the Department of Drug and Alcohol Programs, Division of Program Licensure, 132 Kline Plaza, Harrisburg, Pennsylvania 17104.

[Pa.B. Doc. No. 14-2137. Filed for public inspection October 17, 2014, 9:00 a.m.]

**DEPARTMENT OF DRUG AND
ALCOHOL PROGRAMS**

[28 PA. CODE CH. 709]

Standards for Licensure of Freestanding Treatment Facilities

The Department of Drug and Alcohol Programs (Department) amends §§ 709.21—709.26 and 709.28—709.32 and adds § 709.34 (relating to reporting of unusual incidents) to read as set forth in Annex A.

This final-form rulemaking reduces redundant and outdated requirements and maintains the elements regarding quality and safety. With the addition of § 709.34, the Department is requiring that all drug and alcohol facilities develop and implement policies and procedures to respond to and report specific unusual incidents. Some facilities are currently required by § 715.28 (relating to unusual incidents) to report unusual incidents and most other facilities are also providing these reports on a voluntary basis.

The preliminary proposed regulation was presented and discussed with the Department's stakeholders at a meeting on June 28, 2013, which was followed by a 30-day comment period. The proposed rulemaking was a result of comments and suggestions made at the stakeholder meeting and the comment period. Further revisions were made in the final-form rulemaking in response to comments by the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Society of Physician Assistants (PSPA).

A. Effective Date

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

B. Contact Persons

For further information concerning the final-form rulemaking, contact Ronald G. Young, Director, Division of Program Licensure, 132 Kline Plaza, Harrisburg, PA 17104, (717) 783-8675; or Tawny K. Mummah, Deputy General Counsel, Counsel to the Department of Drug and Alcohol Programs, 333 Market Street, 17th Floor, Harrisburg, PA 17101, (717) 783-6563. The final-form rulemaking is available on the Department's web site at www.ddap.pa.gov.

C. Statutory Authority

This final-form rulemaking is authorized under the act of July 9, 2010 (P. L. 348, No. 50) (Act 50), which created the Department. Specifically, Act 50 added section 2301-A of The Administrative Code of 1929 (71 P. S. § 613.1) and provided the Department with the power to promulgate rules and regulations necessary to carry out the provisions in paragraph (9) of this section.

D. Background and Purpose

Act 50 transferred the powers, duties and functions of the Department of Health concerning drug or alcohol abuse to the Department. The goal of this final-form rulemaking is to eliminate redundant or outdated requirements and maintain or strengthen the elements regarding quality and safety.

The Department is satisfied there is no reasonable alternative to proceeding with the final-form rulemaking. The Department is also satisfied that the final-form rulemaking meets the requirements of Executive Order No. 1996-1, "Regulatory Review and Promulgation."

E. Summary of Regulatory Requirements

Reduction of regulatory requirements

Except for the addition of the reporting of unusual incidents in § 709.34, this final-form rulemaking reduces the burden on the regulated community currently imposed by Chapter 709 (relating to standards for licensure of freestanding treatment facilities). For instance, the Department is deleting regulatory requirements that specifically provide how the facility should be governed and how the facility should manage its personnel policies, procedures and records. The following is an explanation of why the Department has deleted certain requirements.

§ 709.22. Governing body

This final-form rulemaking deletes former subsections (b) and (c) and (e)(1)—(3) because these requirements are no longer necessary. Specifically, at the time these regulations were put into place, there were not credential or experiential requirements for individuals and staff operating the facility. As a result, regulatory guidance concerning how to run a business was needed. Now, under Chapter 704 (relating to staffing requirements for drug and alcohol treatment activities), individuals in key positions have credential and experiential requirements relative to operating a business. In addition, the Department of State is responsible for providing guidance for corporations. In final-form subsections (b) and (c), the Department clarifies the duties of the governing body. For example, in final-form subsection (c), it is no longer necessary to tell a business what should be included in an annual report.

§ 709.23. Project director

This final-form rulemaking deletes business-oriented requirements that are a normal part of business operation and no longer need to be dictated by Department regulations.

§ 709.24. Treatment/rehabilitation management

This final-form rulemaking deletes former subsection (b), which required projects to identify primary referral sources (entities that are most likely to refer clients in need of treatment services to the project) and provide proof by getting a letter agreement signed with that entity because it is no longer necessary to direct a project to establish these business relationships that are necessary to run a successful project. Former subsection (d) is no longer necessary due to the implementation and amendment of the Hill-Burton Act, in the late 1970s, which required hospitals to provide emergency services despite the inability to pay.

§ 709.25. Fiscal management

This final-form rulemaking makes clarifications to subsection (a) and deletes subsection (b) because in this age of managed care and sliding fee scales, there are no longer set fee schedules.

§ 709.26. Personnel management

For the most part requirements removed from the policies and procedures are governed by other State and Federal employment law. Concerning the deletion of former subsection (c), similar language appears in § 704.11(a) (relating to staff development program). Requirements retained in this section are for maintained for specific reasons. For example, the retention of the requirement concerning volunteers is necessary because the Department needs to ensure that the volunteers are adequately trained in areas of client confidentiality and client boundary issues. Also, see the response to comment

3. Concerning the subsections regarding personnel records, the Department revised the language by deleting requirements that are superfluous because the Department does not take action if a personnel record is less than satisfactory. For instance, in relation to former subsection (d)(2) and (4), if the project hired an individual with a negative prior employment reference or was paying its employees disparately, the Department would not have authority to object to those employment decisions, so review of those employment records did not serve a purpose.

§ 709.28. *Confidentiality*

§ 709.29. *Retention of client records*

The amendments to these sections are for clarification and in recognition of electronic recordkeeping.

§ 709.30. *Client rights*

Amendments to this section are for clarity and consistency.

§ 709.31. *Data collection system*

This section is amended to delete a reference in subsection (a) to the old data collection system (UDCS) and refer to the system generally because current software used for the Department’s data collection system is likely to be replaced in the future and the regulation would be outdated. Subsection (b) was added to state the essential function of the recordkeeping system.

§ 709.32. *Medication control*

The Department amended this section to recognize that medical professionals other than physicians are authorized by law to give and receive verbal orders for medication. In addition, the inventory requirement was deleted because the projects have contractual agreements with pharmacies that are responsible for keeping inventories of bulk medication supplies. Lastly, individually prescribed medication for clients are not subject to the inventory requirements.

Increase in regulatory requirements

In most instances where it appears that the Department is increasing requirements, it is instead incorporating or restating Department of Health interpretive guidelines that did not have the force and effect of law but were used by the Department of Health to explain or augment the regulatory requirements.

§ 709.34. *Reporting of unusual incidents*

With the addition of § 709.34, the Department is requiring that drug and alcohol facilities develop and implement policies and procedures to respond to and report specific unusual incidents. This requirement is not overly burdensome as some treatment facilities are already required under § 715.28 to report unusual incidents and most other facilities are also providing these reports on a voluntary basis under a Department of Health-issued Licensing Alert, which, similar to interpretive guidelines, does not have the force and effect of law.

F. *Comments and Responses*

Notice of proposed rulemaking was published at 44 Pa.B. 1317 (March 8, 2014), affording the public, the General Assembly and IRRC the opportunity to offer comments.

Comments were received from IRRC and the PSPA. The comments and the Department’s responses follow.

Comment 1: IRRC raised “concerns regarding the clarity of the regulation as proposed” because § 701.1 (relat-

ing to general definitions) defines “Department” as the Department of Health and not the Department. IRRC stated that this is likely to cause the reader confusion. Therefore, IRRC recommended that the Department “take appropriate action to modify, repeal or supersede existing regulations as necessary to ensure clarity within this proposed regulation and any future proposed regulations.” In addition, IRRC recommended that the Department change the heading of Part V to “Department of Drug and Alcohol Programs” to avoid confusion and to more clearly distinguish the Department’s regulations from those of the Department of Health.

Response: The Department has fully addressed IRRC’s concerns. Specifically, in accordance with section 204 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204), known as the Commonwealth Documents Law (CDL) the Secretary of the Department requested and received approval from the Office of General Counsel and the Office of Attorney General to proceed with a final-omitted rulemaking that will serve several housekeeping functions.

Specifically, the final-omitted rulemaking provides clarity in § 701.1 by changing the definition of “Department” from the Department of Health to the Department, updating § 701.3 (relating to legal base) to include Act 50 and updating § 701.13 (relating to contact person) from the Department of Health to the Department. Lastly, to further provide clarity, the final-omitted rulemaking changes the heading of Part V from “Drug and Alcohol Facilities and Services” to “Department of Drug and Alcohol Programs” as suggested by IRRC. See 44 Pa.B. 6658 (October 18, 2014) for this final-omitted rulemaking.

Comment 2: IRRC requested that the Department comply with the Regulatory Review Act (71 P.S. §§ 745.1—745.12a) by providing more detailed information in the Regulatory Analysis Form (RAF) and the preamble to enable IRRC to determine whether the final-form rulemaking is in the public interest.

Response: The Department significantly revised the RAF and the preamble to provide IRRC with sufficient information to determine that the final-form rulemaking is in the public interest.

Comment 3: IRRC raised a concern that proposed amendments to § 709.26 (relating to personnel management) lack clarity.

Response: The Department addressed IRRC’s concern and further revised this section for the sake of clarity. Specifically, additional language has been added to the second sentence of § 709.26(a).

Comment 4: IRRC and the PSPA requested that the Department revise the final-form rulemaking by specifically listing “physician assistants” as an authorized medical professional in § 709.32 (relating to medication control).

Response: The Department is not comfortable with specifically including physician assistants because the laws concerning medical professionals authorized to prescribe and receive prescriptions have been frequently revised over time. The Department does not want the regulation to be quickly outdated. However, for consistency, the Department further revised subsection (b) to delete references to “pharmacist” or “nurse” and therefore is not specifically referencing any authorized medical professionals.

Comment 5: IRRC requested that the Department revise the final-form rulemaking in accordance with the

Pennsylvania Code & Bulletin Style Manual by deleting the phrase “includes, but is not limited to” and instead use “includes.”

Response: The Department disagrees with this comment and uses the phrase “includes, but is not limited to” in the final-form rulemaking because the Department is setting the floor of what should be included in the project’s written policy and procedure, but not providing the exhaustive list. For instance, in a written treatment plan proscribed by § 709.24 (relating to treatment/rehabilitation management), the Department has identified elements that must be included in that document but knows that the project’s client will be well served by the inclusion of other elements not regulated by the Department.

The Department received a comment following the public comment period from Blue Cross of Northeastern Pennsylvania supporting the proposed rulemaking and urging the Department to amend 4 Pa. Code § 255.5 (relating to projects and coordinating bodies: disclosure of client-oriented information).

G. *Benefits, Cost and Compliance*

Benefits

The final-form rulemaking will benefit drug and alcohol facilities by reducing the Department’s inspection time at a facility. Specifically, the Division of Program Licensure will no longer be reviewing the policies, procedures and records that were reviewed under the former regulations.

Compliance costs

There are no compliance costs for drug and alcohol facilities associated with this final-form rulemaking.

Paperwork requirements

There are no additional paperwork requirements associated with this final-form rulemaking as the unusual incident reports required under § 709.34 are currently being submitted by the regulated community as explained in Section E of this preamble.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 26, 2014, the Department submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 1317, to IRRC and the Chairpersons of the House Human Services Committee and the Senate Committees on Public Health and Welfare for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 3, 2014, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 4, 2014, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of the intention to adopt these regulations has been given under sections 201 and 202 of the

CDL (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 44 Pa.B. 1317.

(4) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 28 Pa. Code Chapter 709, are amended by adding § 709.34 and by amending §§ 709.21—709.26 and 709.28—709.32 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

GAROLD E. TENNIS,
Secretary

(Editor’s Note: See 44 Pa.B. 6658 (October 18, 2014) for both a final-omitted rulemaking by the Department relating to this final-form rulemaking and for a document transferring Department regulations.)

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 6051 (September 20, 2014).)

Fiscal Note: Fiscal Note 74-1 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 28. HEALTH AND SAFETY

PART V. DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS

CHAPTER 709. STANDARDS FOR LICENSURE OF FREESTANDING TREATMENT FACILITIES

Subchapter C. GENERAL STANDARDS FOR FREESTANDING TREATMENT ACTIVITIES

§ 709.21. Applicability.

(a) The intake, evaluation and referral, inpatient nonhospital, partial hospitalization, outpatient and inpatient hospital activities shall comply with this chapter.

(b) A facility in which freestanding treatment activities are provided that has a valid full license from the Department of Public Welfare under 55 Pa. Code Chapters 5300 and 5310 (relating to private psychiatric hospitals; and community residential rehabilitation services for the mentally ill) is deemed to be in compliance with §§ 709.22—709.26, 709.29 and 709.32. This subsection shall remain in effect as long as the Department finds the standards in 55 Pa. Code Chapters 5300 and 5310 to be consistent with the requirements of this subchapter.

§ 709.22. Governing body.

(a) A project shall have a governing body and legal responsibility for the project rests in the governing body.

(b) The duties of the governing body include, but are not limited to, the following:

(1) Designating the position to serve as project director as the person officially responsible to the governing body either directly or indirectly.

(2) Identifying the project's purpose and philosophy directly related to drug and alcohol services.

(3) Documenting the project's organizational structure.

(c) If a facility is publicly funded, the governing body shall make available to the public an annual report which includes, but is not limited to, a statement disclosing the names of officers, directors and principal shareholders, when applicable.

§ 709.23. Project director.

Project directors shall prepare, annually update and sign a written manual delineating project policies and procedures.

§ 709.24. Treatment/rehabilitation management.

(a) The governing body shall adopt a written plan for the coordination of client treatment and rehabilitation services which includes, but is not limited to:

(1) Definition of the target population toward whom facility services are directed.

(2) Identification of the treatment models and practices utilized by the project.

(3) Written procedures for the management of treatment/rehabilitation services for clients.

(4) Written procedures for referral outlining cooperation with other service providers including, but not limited to, provisions for access to emergency services.

(b) The project shall maintain a current community resource listing of other health and social service agencies.

§ 709.25. Fiscal management.

The project shall obtain the services of an independent certified public accountant for an annual financial audit of activities associated with the project's drug/alcohol abuse services, in accordance with generally accepted accounting principles which include reference to the drug and alcohol treatment activities.

§ 709.26. Personnel management.

(a) The governing body shall adopt and have implemented written project personnel policies and procedures in compliance with State and Federal employment laws. In addition, the written policies and procedures must specifically include, but are not limited to:

(1) Utilization of volunteers.

(2) Rules of conduct.

(3) Supervision of staff.

(4) Orientation of new employees.

(b) The personnel records must include, but are not limited to:

(1) Application or resume for employment.

(2) Written verification of qualifying professional credentials.

(3) Annual written individual staff performance evaluations, copies of which shall be reviewed and signed by the employee.

(4) Disciplinary actions.

(c) There shall be written job descriptions for project positions.

§ 709.28. Confidentiality.

(a) A written procedure shall be developed by the project director which shall comply with 4 Pa. Code § 255.5 (relating to projects and coordinating bodies: disclosure of client-oriented information). The procedure must include, but not be limited to:

(1) Confidentiality of client identity and records. Procedures must include a description of how the project plans to address security and release of electronic and paper records and identification of the person responsible for maintenance of client records.

(2) Identification of project staff having access to records, and the methods by which staff gain access.

(b) The project shall secure hard copy client records within locked storage containers. Electronic records must be stored on secure, password protected data bases.

(c) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent must be in writing and include, but not be limited to:

(1) Name of the person, agency or organization to whom disclosure is made.

(2) Specific information disclosed.

(3) Purpose of disclosure.

(4) Dated signature of client or guardian as provided for under 42 CFR 2.14(a) and (b) and 2.15 (relating to minor patients; and incompetent and deceased patients).

(5) Dated signature of witness.

(6) Date, event or condition upon which the consent will expire.

(d) A copy of a client consent shall be offered to the client and a copy maintained in the client record.

(e) When consent is not required, the project personnel shall:

(1) Fully document the disclosure in the client records.

(2) Inform the client, as readily as possible, that the information was disclosed, for what purposes and to whom.

§ 709.29. Retention of client records.

(a) Client records, regardless of format, shall be readily accessible for a minimum of 4 years following the discharge of a client.

(b) If the project discontinues operation, it shall make known to the Department where its records are stored.

§ 709.30. Client rights.

The project shall develop written policies and procedures on client rights and document written acknowledgement by clients that they have been notified of those rights.

(1) A client receiving care or treatment under section 7 of the act (71 P. S. § 1690.107) shall retain civil rights and liberties except as provided by statute. No client may be deprived of a civil right solely by reason of treatment.

(2) The project may not discriminate in the provision of services on the basis of age, race, creed, sex, ethnicity, color, national origin, marital status, sexual orientation, handicap or religion.

(3) Clients have the right to inspect their own records. The project, facility or clinical director may temporarily remove portions of the records prior to the inspection by the client if the director determines that the information may be detrimental if presented to the client. Reasons for removing sections shall be documented in the record.

(4) Clients have the right to appeal a decision limiting access to their records to the director.

(5) Clients have the right to request the correction of inaccurate, irrelevant, outdated or incomplete information in their records.

(6) Clients have the right to submit rebuttal data or memoranda to their own records.

§ 709.31. Data collection system.

(a) A data collection and recordkeeping system shall be developed that allows for the efficient retrieval of data needed to measure the project's performance in relationship to its stated goals and objectives.

(b) The recordkeeping system must allow for the identification of clients' admissions and discharges within a specific time period.

§ 709.32. Medication control.

(a) Projects furnishing pharmaceutical services shall present a license from the Department of Health's Board of Examiners or the Department of State's State Board of Pharmacy and a DEA registration to Department employees. Other notices of review or inspection, or both, shall be made available upon request.

(b) Verbal orders for medication can be given only by a physician or other medical professional authorized by State and Federal law to prescribe medication and verbal orders may be received only by another physician or medical professional authorized by State and Federal law to receive verbal orders. When a verbal or telephone order is given, it has to be authenticated in writing by a physician or other medical professional authorized by State and Federal law to prescribe medication. In detoxification levels of care, written authentication shall occur no later than 24 hours from the time the order was given. Otherwise, written authentication shall occur within 3 business days from the time the order was given.

(c) The project shall have and implement a written policy and procedures regarding all medications used by clients which shall include, but not be limited to:

(1) Administration of medication, including the documentation of the administration of medication:

(i) By individuals permitted to administer by Pennsylvania law.

(ii) When self administered by the client.

(2) Drug storage areas including, but not limited to, the secure storage of controlled substances and other abusable drugs in accordance with State and Federal regulations and program requirements.

(3) Inspection of storage areas that ensures compliance with State and Federal laws and program policy. The policy must include, but not be limited to:

(i) What is to be verified through the inspection, who inspects, how often, but not less than quarterly, and in what manner it is to be recorded.

(ii) Disinfectants and drugs for external use are stored separately from oral and injectable drugs.

(iii) Drugs requiring special conditions for storage to insure stability are properly stored.

(iv) Outdated drugs are removed.

(v) Copies of drug-related regulations are available in appropriate areas.

(4) Methods for control and accountability of drugs, including, but not limited to:

(i) Who is authorized to remove drug.

(ii) The program's system for recording drugs, which includes the name of the drug, the dosage, the staff person, the time and the date.

(5) Security of drugs, including, but not limited to, the loss, theft or misuse of drugs.

(6) Medication errors and drug reactions shall be recorded in the client record. This may be the medical record if a separate medical record is maintained for all clients.

§ 709.34. Reporting of unusual incidents.

(a) The project shall develop and implement policies and procedures to respond to the following unusual incidents:

(1) Physical assault or sexual assault by staff or a client.

(2) Selling or use of illicit drugs on the premises.

(3) Death or serious injury due to trauma, suicide, medication error or unusual circumstances while in residential treatment or, when known by facility, for ambulatory services.

(4) Significant disruption of services due to disaster such as fire, storm, flood or other occurrence which closes the facility for more than 1 day.

(5) Theft, burglary, break-in or similar incident at the facility.

(6) Event at the facility requiring the presence of police, fire or ambulance personnel.

(7) Fire or structural damage to the facility.

(8) Outbreak of a contagious disease requiring Centers for Disease Control (CDC) notification.

(b) Policies and procedures must include the following:

(1) Documentation of the unusual incident.

(2) Prompt review and identification of the causes directly or indirectly responsible for the unusual incident.

(3) Implementation of a timely and appropriate corrective action plan, when indicated.

(4) Ongoing monitoring of the corrective action plan.

(5) Reporting mechanism to ensure that reporting of an unusual incident to an entity is in compliance with State and Federal confidentiality laws.

(c) To the extent permitted by State and Federal confidentiality laws, the project shall file a written unusual incident report with the Department within 3 business days following an unusual incident involving:

(1) Physical or sexual assault by staff or a client.

(2) Death or serious injury due to trauma, suicide, medication error or unusual circumstances.

(3) Significant disruption of services due to a disaster such as a fire, storm, flood or other occurrence that results in the closure of a facility for more than 1 day.

(4) Event at the facility requiring the presence of police, fire or ambulance personnel.

(5) Outbreak of a contagious disease requiring CDC notification.

[Pa.B. Doc. No. 14-2138. Filed for public inspection October 17, 2014, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PHILADELPHIA PARKING AUTHORITY

[52 PA. CODE CHS. 1001, 1011 AND 1051]

Annual Filing Requirements

The Philadelphia Parking Authority (Authority), on July 30, 2014, adopted a final-form rulemaking order to modify existing annual filing requirements to eliminate reference to the term “expire” when used in conjunction with a certificate of public convenience and that filing requirement. While the Authority’s regulations do not provide for the expiration of certificates of public convenience, some industry members have expressed confusion over the use of this term. The final regulation is intended only for those clarification purposes.

Philadelphia Taxicab and Limousine Regulations; Annual Information Review; Doc. No. 126-9

Final Rulemaking Order

By the Authority:

The Authority is the sole regulator of all taxicab and limousine service in Philadelphia.¹ In furtherance of those regulatory functions, the Authority issued a proposed regulation at this docket number on March 25, 2014. The initial public comment period for this rulemaking proceeding concluded on June 9, 2014, the Independent Regulatory Review Commission (“IRRC”) submitted its comments on July 9, 2014. The Authority has completed its review of the comments and now issues the final-form regulation.

Purpose of the Final-Form Regulation

The Authority’s existing regulations require all regulated parties to make an annual information filing (renewal) with the Authority to ensure that the individual or business entity is in continuing compliance with the act and the Authority’s orders and regulations. This annual update or “renewal” process was an issue during the promulgation of the regulations because of the regulations use of the term “expired” regarding certificates of public convenience. See 41 Pa.B. 6499, 6526 (December 11, 2011).

In order to eliminate confusion, the final-form regulation will eliminate the use of the word expired as to taxicab, limousine and dispatcher certificates of public convenience. Because driver certificates and broker registrations do expire, the term will continue to apply in that context. Driver certificates and broker registrations will continue to be subject to an annual review process that will include the potential for expiration of those authorizations.

¹ The act of July 16, 2004, (P.L. 758, No. 94), 53 Pa.C.S. §§ 5701 et seq., as amended (the “act”).

Discussion

The Authority has reviewed IRRC’s comments to the proposed regulation and has adopted each recommended change. There were no public comments.

§ 1011.4. Annual assessments and renewal fees.

This section remains unchanged from the proposed regulation, except where changed in subsections (b) and (c) to clarify that a certificate holder has 30 days from the date of an assessment notice to make either the entire payment or an installment payments, as permitted. IRRC suggested these clarifications, which will also be more closely aligned with the language of the statute. See 53 Pa.C.S. § 5707.1(a). We agree with IRRC’s comment and have also made this clarification applicable to limousine CPC holders in § 1051.4 (relating to annual assessments and renewal fees).

§ 1051.3. Annual rights renewal process.

This section remains unchanged from the proposed regulation, except where changed in subsections (g)(6). The term “TLD Inspection” sticker is amended and replaced with “Limousine Rights” sticker, which is the name of the annual sticker issued to limousine companies. The term limousine rights sticker is defined in § 1055.1. The Authority does not issue an “Inspection Sticker” annually to each limousine, because only a portion of the fleet of limousines in Philadelphia is inspected each year, whereas taxicabs are inspected twice each year.

Also, in the same sentence, IRRC correctly noted that the term “taxicab” is used instead of “limousine.” That error has been corrected.

§ 1051.4. Annual assessment and renewal fees.

This section remains unchanged from the proposed regulation, except where we have corrected an inaccurate cross reference noted by IRRC. The reference to § 1051.3(c)(4) has been corrected to “§ 1051.3(c)(3).”

Affected Parties

The regulation will affect the holders of an Authority certificate of public convenience or renewable authority rights, but will not create any new obligation or burden. The filing requirements at issue predate the final-form regulation.

Fiscal Impact

The final-form regulation will have no fiscal impact or increase any paperwork obligation as to any party, the Commonwealth, any political subdivisions, private sector person or the general public.

Effective Date and Conclusion

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. Accordingly, under sections 13 and 17 of the Act (53 Pa.C.S. §§ 5722 and 5742); section 5505(d)(17), (23) and (24) of the Parking Authorities Act, act of June 19, 2001 (P.L. 287, No. 22) (53 Pa.C.S. § 5505(d)(17), (23) and (24)); sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P.S. § 745.5); section 612 of The Administrative Code of 1929 (71 P.S. § 232) and the regulations promulgated at 4 Pa. Code §§ 7.231—7.234, the Authority proposes adoption of the final regulations set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Authority, 52 Pa. Code Chapters 1001, 1011 and 1051, are amended by amending §§ 1001.43, 1011.3, 1011.4, 1051.3 and 1051.4 to read as set forth in Annex A.

2. The Executive Director shall cause this order and Annex A to be submitted to the Office of Attorney General for approval as to legality.

3. The Executive Director shall cause this order and Annex A to be submitted for review by the designated standing committees of both Houses of the General Assembly, and for formal review by the Independent Regulatory Review Commission.

4. The Executive Director shall cause this order and Annex A to be submitted for review by the Governor's Budget Office for review of fiscal impact.

5. The Executive Director shall cause this order and Annex A to be deposited with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. The Executive Director shall serve copies of this order and Annex A upon each of the commentators and take all other actions necessary to successfully complete the promulgation of this regulation.

7. The regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

8. The contact person for this rulemaking is Dennis G. Weldon, Jr., General Counsel, (215) 683-9630.

VINCENT J. FENERTY, Jr.,
Executive Director

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 6051 (September 20, 2014).)

Fiscal Note: Fiscal Note 126-9 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART II. PHILADELPHIA PARKING AUTHORITY

Subpart A. GENERAL PROVISIONS

CHAPTER 1001. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter E. FEES

§ 1001.43. Authority fee schedule.

(a) *Issuance.* The Authority will issue a new fee schedule for each fiscal year under section 5710(a) of the act (relating to fees).

(b) *Notice.* The Authority will provide general notice of the new fee schedule through publication in the *Pennsylvania Bulletin*. The Authority will provide direct notice of the fee schedule by email to each certificate holder within 5 days of its effective date. The current fee schedule may be obtained from the Authority's web site at www.philapark.org/tld.

(c) *Supersession.* Subsection (a) supersedes 1 Pa. Code §§ 33.21(b) and 33.23 (relating to filing fees; and copy fees).

Subpart B. TAXICABS

CHAPTER 1011. GENERAL PROVISIONS

§ 1011.3. Annual rights renewal process.

(a) *Expiration of driver and broker rights.* All driver and broker rights will expire annually as follows:

(1) A taxicab driver's certificate will expire 1 year from its date of issuance or renewal.

(2) Except as provided in subsection (f), a broker registration will expire on June 30 of each year.

(b) *Expired rights.*

(1) Expired rights will be placed out of service by the Authority as provided in § 1003.32 (relating to out of service designation).

(2) Taxicab driver certificates that have been expired for 1 year or more will be deemed cancelled.

(c) *Renewal forms.*

(1) Rights in subsection (a) shall be renewed by completing and filing the required renewal form with the Manager of Administration. Renewal forms may be obtained on the Authority's web site at www.philapark.org/tld or from TLD Headquarters.

(2) The renewal forms may require the submission of additional information or documents to confirm continuing eligibility under the act or this part.

(3) The renewal forms must be verified as provided in § 1001.36 (relating to verification and affidavit) and filed as follows:

(i) For taxicab drivers' certificates, Form DR-3 "Driver Renewal" shall be filed between 60 and 90 days before the expiration date printed on the taxicab driver's certificate.

(ii) For broker registrations, a Form BR-4 "Broker Renewal" shall be filed on or before February 15 of each year.

(d) *Renewal denial.* The Authority will deny renewal of rights in the following circumstances:

(1) If the owner of the rights subject to renewal fails to complete the renewal process.

(2) The renewal process reveals information about the renewing person that would have resulted in a denial of an initial application for the rights.

(3) The renewing person fails to comply with § 1011.4 (relating to annual assessments and renewal fees).

(e) *Suspended driver and broker rights.* Rights subject to suspension for any reason must be renewed on the dates and in the manner provided by subsection (c)(3) regardless of the suspended status.

(f) *New certificates and registrations.* A certificate or broker registration will not be subject to the renewal or annual information filing requirements in this section during the calendar year in which it is first issued.

(g) *Taxicab and dispatcher information filing.*

(1) The owner of taxicab or dispatcher rights shall complete the annual information filing required under this subsection to ensure continued compliance with the act, this part and the orders of the Authority.

(2) The annual information filing required under this subsection must be verified as provided in § 1001.36 and filed with the Manager of Administration as follows:

(i) For medallion taxicab certificates, Form TX-1 "Medallion Renewal" shall be filed on or before February 15 of each year.

(ii) For partial-rights taxicab certificates, Form PR-1 "Partial Rights Renewal" shall be filed on or before March 31 of each year.

(iii) For dispatcher certificates, Form DSP-6 "Dispatcher Renewal" shall be filed on or before March 31 of each year.

(3) The forms identified in paragraph (2) may require the submission of additional information or documents in furtherance of that review and may be obtained on the Authority's web site at www.philapark.org/tld or from TLD Headquarters.

(4) The filing requirements of this subsection apply to rights subject to suspension for any reason.

(5) The failure to file Form LM-1 will subject the applicable rights to an out of service designation as provided in § 1003.32.

(6) The TLD will not issue a TLD inspection sticker to a vehicle operated through a taxicab certificate if the review of the information required under this section reveals information about the certificate holder that would have resulted in a denial of an initial application for the rights. This paragraph does not relieve a certificate holder of any other penalty that may result from noncompliance, nor the obligation to appear at inspections as directed by the TLD.

§ 1011.4. Annual assessments and renewal fees.

(a) *Assessments and renewal fees.* The owners of rights issued by the Authority shall pay an annual assessment or renewal fee in an amount established each year under section 5707(a) and (c) of the act (relating to budget and assessments) and as set forth in the Authority's annual fee schedule as provided in § 1001.43 (relating to Authority fee schedule).

(b) *Payment of assessments by certificate holders.* Assessment payments shall be made by each certificate holder within 30 days after service of the notice of assessment as provided in section 5707.1(a) of the act (relating to assessment notice and hearings).

(c) *Installment payments.* Upon request by a taxicab certificate holder through the annual renewal form required under § 1011.3(g) (relating to annual rights renewal process), the Director may permit certificate holders to pay the assessment in two equal installments within 30 days after service of the notice of assessment as provided in section 5707.1(a) of the act and December 15 of each year, as limited under subsections (d) and (e).

(d) *Assessment payment by appointment.*

(1) In person appointments to make installment payments for annual assessments may be scheduled by the Director any time after the renewal form is filed. The Director may reschedule appointment times to accommodate the availability of the certificate holder. Notice of appointment times will be provided at least 10 days in advance and as provided in § 1001.51 (relating to service by the Authority).

(2) The scheduled appointment will become the new due date for the installment assessment payment.

(3) The Authority will provide notice of assessment payment appointments as provided in § 1001.51.

(e) *Eligibility.* A certificate will be ineligible for assessment installment payments if the certificate holder or any person having a controlling interest in the certificate holder has done any of the following in the previous 2 years:

(1) Failed to pay an assessment to the Authority on schedule.

(2) Failed to begin and complete the annual rights renewal process on schedule.

(3) Been subject to suspension or cancellation of any rights issued by the Authority under the act, this part or an order of the Authority.

(f) *Payment of renewal fees by taxicab drivers.* The annual renewal fee for taxicab drivers is due with the filing of the DR-3 as provided in § 1011.3(c)(3)(i).

(g) *Payment of renewal fees by brokers.* The annual renewal fee for brokers is due with the filing of the BR-4 as provided in § 1011.3(c)(3)(ii).

(h) *Late assessment or renewal fee payments.*

(1) An installment assessment payment will be considered late if not paid at the appointed time and date for payment.

(2) Rights issued by the Authority may be placed out of service at the time an assessment or renewal fee payment becomes late, as provided in § 1003.32 (relating to out of service designation).

Subpart C. LIMOUSINES

CHAPTER 1051. GENERAL PROVISIONS

§ 1051.3. Annual rights renewal process.

(a) *Expiration of driver's certificate.* A limousine driver's certificate will expire 1 year from its date of issuance or renewal.

(b) *Expired rights.*

(1) Expired rights will be placed out of service by the Authority as provided in § 1003.32 (relating to out of service designation).

(2) Limousine driver certificates that have been expired for 1 year or more will be deemed cancelled.

(c) *Renewal forms.*

(1) Limousine driver certificates shall be renewed by completing and filing the Form DR-3 "Driver Renewal" with the Manager of Administration. Renewal forms may be obtained on the Authority's web site at www.philapark.org/tld or from TLD Headquarters.

(2) Form DR-3 may require the submission of additional information or documents to confirm continuing eligibility under the act, this part and orders of the Authority and must be verified as provided in § 1001.36 (relating to verification and affidavit).

(3) Form DR-3 shall be filed between 90 and 60 days before the expiration date printed on the limousine driver's certificate.

(d) *Renewal denial.* The Authority will deny renewal of a limousine driver certificate in the following circumstances:

(1) If the owner of the rights subject to renewal fails to complete the renewal process.

(2) The renewal process reveals information about the renewing person that would result in a denial of an initial application for the rights.

(3) The renewing person fails to comply with § 1051.4 (relating to annual assessments and renewal fees).

(e) *Suspended driver rights.* Rights subject to suspension for any reason shall be renewed on the dates and in the manner provided by this section regardless of the suspended status.

(f) *New certificates.* A certificate will not be subject to the information filing requirements of subsection (g) during the calendar year in which it is first issued.

(g) *Limousine information filing.*

(1) The owner of limousine rights shall complete on an annual basis Form LM-1 "Limousine Renewal" to ensure continued compliance with the act, this part and the orders of the Authority.

(2) Form LM-1 shall be verified as provided in § 1001.36 and filed with the Manager of Administration on or before March 31 of each year.

(3) Form LM-1 may require the submission of additional information or documents and may be obtained on the Authority's web site at www.philapark.org/tld or from TLD Headquarters.

(4) The filing requirements of this subsection apply to rights subject to suspension for any reason.

(5) The failure to file Form LM-1 will subject the applicable rights to an out of service designation as provided in § 1003.32.

(6) The TLD will not issue a limousine rights sticker to a vehicle operated through a limousine certificate if the review of the information required under this section reveals information about the certificate holder that would have resulted in a denial of an initial application for the rights. This paragraph does not relieve a certificate holder of any other penalty that may result from

noncompliance, nor the obligation to appear at inspections as directed by the TLD.

§ 1051.4. Annual assessments and renewal fees.

(a) *Assessments and renewal fees.* The owners of rights issued by the Authority shall pay an annual assessment or renewal fee in an amount established each year under section 5707(a) and (c) of the act (relating to budget and assessments) and as set forth in the Authority's annual fee schedule as provided in § 1001.43 (relating to Authority fee schedule).

(b) *Payment of assessments by certificate holders.* The annual assessment for certificate holders is due within 30 days after service of the notice of assessment as provided in section 5707.1(a) of the act (relating to assessment notice and hearings).

(c) *Payment of renewal fees by limousine drivers.* The annual renewal fee for limousine drivers is due with the filing of the DR-3 as provided in § 1051.3(c)(3) (relating to annual rights renewal process).

(d) *Late assessment or renewal fee payments.* Rights issued by the Authority may be placed out of service at the time an assessment or renewal fee payment becomes late as provided in § 1003.32 (relating to out of service designation).

[Pa.B. Doc. No. 14-2139. Filed for public inspection October 17, 2014, 9:00 a.m.]