

PROPOSED RULEMAKING

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 713]

Charter Schools and Cyber Charter Schools

The Department of Education (Department) proposes to add Chapter 713 (relating to charter schools and cyber charter schools) to read as set forth in Annex A.

Statutory Authority

Sections 1732-A(c) and 1751-A of the Charter School Law (CSL) (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A—17-1751-A). The Department is exercising this authority with this proposed rulemaking to add a new chapter under Part XX (relating to charter schools).

Purpose and Background

In enacting the CSL in 1997, the General Assembly intended, as described in section 1702-A of the CSL (24 P.S. § 17-1702-A), to provide opportunities for teachers, parents, pupils and community members to establish and maintain charter schools that operate independently from the existing school district structure as a method to:

- Improve pupil learning.
- Increase learning opportunities for all pupils.
- Encourage the use of different and innovative teaching methods.
- Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- Hold the schools established under the CSL accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

At the heart of these principles is the idea that charter schools will serve as laboratories of innovation; however, apart from amendments enacted in 2001 to authorize the establishment of cyber charter schools, the CSL has remained largely unchanged since its enactment.

Charter school entities are generally divided into four types—charter schools, regional charter schools, cyber charter schools and multiple charter school organizations (MCSO). Both charter schools and regional charter schools are independent public schools established and operated under a charter from the local school board or boards and in which students physically attend. These schools are commonly referred to as “brick-and-mortar” charter schools and focus on teacher-led discussion and teacher knowledge imparted to students through face-to-face interaction at the schools’ physical facilities located within the boundaries of the school district or districts that granted the charter. A cyber charter school is an independent public school established and operated under a charter from the Department. Cyber charter schools use technology to provide a significant portion of curriculum and to deliver a significant portion of instruction to their students through the internet or other electronic means

without a school-established requirement that students be present at a supervised physical facility designated by the school, except on a very limited basis, such as for standardized assessments. The fourth type of charter school entity is an MCSO. Section 1729.1-A of the CSL (24 P.S. § 17-1729.1-A) permits, under certain circumstances, the merger of two or more existing charter schools or regional charter schools into an MCSO, which may operate under the oversight of a single board of trustees and a chief administrator. An MCSO is considered the holder of a charter for each individual charter school in the organization but is not a charter school itself. 24 P.S. § 17-1729.1-A(e). There are currently no MCSOs operating in this Commonwealth.

The Department’s proposed regulation will promote transparency, equity, quality, and accountability in the implementation of the CSL’s provisions relating to the establishment of new charter school entities and the governance and operation of existing charter school entities. Charter schools are expected to receive nearly \$3 billion in publicly paid tuition during the 2020-2021 school year, plus additional Federal funding provided through Federal pandemic emergency and recovery relief. Accordingly, the Department is proposing regulations to ensure public awareness of the expenditure of these resources.

Transparency, equity, quality and accountability in the establishment, governance and operation of charter school entities are vital to ensuring that constituencies impacting charter school entities—including the boards of trustees that govern charter school entities, the for-profit and nonprofit organizations that play a role in the management of charter school entities and authorizers of charter school entities—adhere to the structural norms that maintain the effectiveness of the CSL.

The regulation is not mandated by any Federal or State law or court order or Federal regulation. However, the Commonwealth Court, in *Insight PA Cyber Charter School v. Department of Education*, 162 A.3d 591 (Pa. Cmwlth. 2017), noted “the Department has the express authority to promulgate regulations to implement the portions of the [Charter School Law] relating to cyber charter schools. . .” and that, in the context of management organization contracts, promulgated regulations “would be beneficial to charter school applicants and chartering authorities.”

At 49 Pa.B. 4817 (August 24, 2019) the Department published an advance notice of proposed rulemaking (ANPR) announcing its intention to exercise its statutory authority and submit a rulemaking to amend Part XX. There was no time limit for submitting public comment, and a link to the ANPR has been available on the Department’s web site since August 2019. On November 22, 2019, the Department hosted a public roundtable in State College for interested stakeholders to provide feedback on priorities as outlined in the ANPR. To date, the Department has received approximately 50 comments from stakeholders. While most comments concerned desired statutory changes, other commenters addressed important goals of this proposed rulemaking.

In a letter to the Secretary of Education, the solicitor for the School District of Pittsburgh wrote, “It is our hope that these proposed regulations, when combined with comprehensive charter reform legislation. . .will address several important tasks. Among these are to codify char-

ter case law in areas where the Charter School Law (CSL) has been interpreted by the Courts; to clarify open questions regarding charter funding, to improve charter schools' transparency and accountability and to begin to right the imbalance between school districts and charter schools that is imbedded into current law and policy." More specifically, the School District of Pittsburgh supports the development of a Statewide application for charter applicants and charter renewals, better enforcement of non-discriminatory enrollment practices, clarification that charter school board trustees are subject to 65 Pa.C.S. 1101—1113 (relating to Public Official and Employee Ethics Act) requirements that educational management service providers be more transparent about expenditure of public funds, and enactment of generally accepted standards of fiscal management and audit requirements.

Organizations such as Asian Americans United, Education Law Center-PA, Justice At Work, Nationalities Service Center, VietLead, IHAS-PA and Arc of Greater Pittsburgh/ACHIEVEA expressed support for comprehensive regulatory reform to ensure charter schools, as public schools, are equitably and inclusively educating all students, including students with disabilities, English learners and other students historically less served by charter schools.

On March 11, 2021, the Pennsylvania Coalition for Public Charter Schools (PCPCS) sent a letter to Governor Tom Wolf, Secretary of Education Noe Ortega, members of the General Assembly, and the superintendents of the School District of Philadelphia and School District of Pittsburgh, calling for "meaningful reforms to Pennsylvania School Law and Public School Code that improves the quality of education for every public school student in charter schools and school districts." In its letter, PCPCS calls for a more defined and consistent process for new charter school applications to ensure the process is "fair, equitable, and efficient." PCPCS further indicates support for modifying the payment process between public school districts, charter schools and the Department to reduce conflicts over non-payments. Finally, PCPCS argues for codification of additional accountability and transparency standards for all public schools. This proposed rulemaking addresses each of these aims.

Relatedly, as of April 5, 2021, a total of 396 school districts, nearly 80% of public school districts, across this Commonwealth have adopted resolutions calling for charter reform that includes transparency and accountability.

Requirements of the Proposed Rulemaking

This proposed rulemaking clarifies the minimum standard for charter school, regional charter school and cyber charter school application requirements, ensures non-discriminatory student enrollment policies as required by the CSL, clarifies that charter school entities' boards of trustees are subject to 65 Pa.C.S. §§ 1101—1113, requires the use of generally accepted principles for accounting and auditing, details the tuition payment redirection process for charter school entities and school districts, and specifies minimum standards for the provision of health care benefits for employees of charter schools, regional charter schools and cyber charter schools.

Proposed § 713.1 (relating to definitions) establishes definitions for the following terms used in this proposed rulemaking: authorizer, charter school, charter school entity, Charter School Law, cyber charter school, Department, educational management service provider, English learner, multiple charter school organization, PAsecureID,

regional charter school, School Code and Secretary. The Department did not include the term "economically disadvantaged" in the definitions, since leaving this term undefined will not lead to confusion for the regulated community but defining the term could lead to unintended consequences in other contexts.

Proposed § 713.2 (relating to contents of charter school or regional charter school application) seeks to promulgate regulations related to the content of a charter school or regional charter school application required under section 1719-A of the CSL (24 P.S. § 17-1719-A). A charter school is a public school that operates independently of school districts under a charter issued by a local board of school directors or a board of public education. A regional charter school is a public school that operates independently of school districts under a charter issued by more than one local board of school directors or boards of education. As required under section 1719-A of the CSL, individuals interested in establishing a charter school or regional charter school must submit an application to the local board of school directors of the school district or districts in which the charter school or regional charter school will be located. Ensuring that these applications conform to statutory requirements—and are well understood by charter school organizers, charter school authorizers and stakeholders—is an important aim of this proposed rulemaking. A rigorous charter application process allows authorizers to hold prospective charter schools to high standards academically, fiscally and administratively, and helps authorizers ensure charter schools are prepared to equitably serve all students. As such, § 713.2 requires applicants seeking to operate a charter school or regional charter school to apply using either an application form created by the Department that includes minimum information requirements set forth in subsection (c) or an application developed by the authorizing school district or districts if such application meets the minimum requirements set forth in subsection (c) and is needed by the local board of directors, as the authorizer, to evaluate the application in accordance with section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)).

Proposed § 713.2(c) clarifies minimum standards for each application requirement specified in section 1719-A of the CSL. Subsection (c)(1) and (2) relate to contact information for the school. Subsection (c)(3) details data that must be provided for each grade and age level the school intends to serve. Subsection (c)(4) outlines the artifacts that a charter school or regional charter school must provide related to governance structure. Subsection (c)(5) requires the charter school or regional charter school to provide the authorizer with its mission and vision as well as curriculum and assessment strategies. Subsection (c)(6) clarifies information to be provided related to the school's admission policy. Subsection (c)(7) relates to the charter school's or regional charter school's planned procedures for suspending or expelling students. Subsection (c)(8) requires information as to how the school will engage community groups in the school planning process. Subsection (c)(9) details the artifacts and data that a charter school or regional charter school must provide as part of its financial plan and auditing requirements under section 437 of the Public School Code of 1949 (School Code) (24 P.S. § 4-437). Subsection (c)(10) relates to the procedures the school will use to review and address complaints from parents and families regarding the operation of the school. Subsection (c)(11) requires the charter school to submit a school calendar consistent with the provisions of section 1502 of the School Code (24 P.S. § 15-1502). Subsection (c)(12) clarifies the type of infor-

mation that must be submitted as part of the description of the charter school's physical facility and arrangements. Subsection (c)(13) details information to be included in the school's proposed faculty and professional development plan for the proposed faculty that complies with Chapters 4 and 49 (relating to academic standards and assessment; and certification of professional personnel). Subsection (c)(14) relates to extracurricular activities. Subsection (c)(15) and (16) clarify that criminal history records and child abuse clearances are required for all employees having direct contact with students and requires the applicant to provide certain information. Subsection (c)(17) clarifies how a charter school or regional charter school must demonstrate its ability to provide adequate liability and other appropriate insurance for the charter school, its employees, and the board of trustees as required by section 1719-A of the CSL.

Similarly, proposed § 713.3 (relating to contents of cyber charter school application) seeks to promulgate regulations related to the content of cyber charter school applications under section 1747-A of the CSL (24 P.S. § 17-1747-A). Specifically, § 713.3 requires applicants seeking to operate a cyber charter school in this Commonwealth to apply using an application form created by the Department that includes the items identified in § 713.2(c) and the provisions of section 1747-A of the CSL.

Proposed § 713.4 (relating to random selection policies for a charter school or regional charter school) seeks to promulgate regulations related to section 1723-A of the CSL (24 P.S. § 17-1723-A) as it pertains to the admissions policies of charter schools and regional charter schools. Section 1723-A of the CSL provides that all children in this Commonwealth qualify for admission to a charter school or regional charter school as provided for in that section, and it permits a charter school or regional charter schools to adopt admission policies and practices if certain criteria are met. Under section 1723-A of the CSL, if more students apply to the charter school or regional charter school than the number of attendance slots available in the school building, then students must be selected on a random basis from a pool of qualified applicants meeting the established eligibility criteria, with limited exceptions. Subsections (b) and (c) set minimum requirements for charter school or regional charter school random selection policies and require these policies be included in application or renewal application materials. Subsection (c) requires the policy to be posted on the school's publicly available web site and accessible to all potential applicants, including individuals with limited English proficiency. Subsection (d) sets forth information that charter schools and regional charter schools must include in annual reports to better assure transparency. Through this regulation, charter schools and regional charter schools can ensure their admission policies are transparent to the public they serve, and community taxpayers, families and students will know exactly how preferences in admissions are considered and weighted. This proposed rulemaking directly benefits students and ensures students have equal access to charter school education and are not discriminated against based on intellectual or physical ability or disability, as required under section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12131—12165), and Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400—1482).

Proposed § 713.5 (relating to random selection policies for a cyber charter school) seeks to promulgate regula-

tions related to section 1723-A of the CSL (as applied to cyber charter schools in section 1749-A of the CSL (24 P.S. § 17-1749-A)) as they pertain to the admission policies of cyber charter schools. Under section 1723-A of the CSL, all resident children in this Commonwealth qualify for admission to a cyber charter school. A cyber charter school may not restrict admission or enrollment based on availability of attendance slots unless such terms are agreed to by the Department and the cyber charter school as part of a written charter under section 1723-A(d) and section 1745-A of the CSL (24 P.S. § 17-1745-A). Therefore, § 713.5 sets minimum requirements for a cyber charter school to ensure random selection of students should more students apply than the number of attendance slots the cyber charter school's charter allows. Similar to § 713.4, § 713.5(c) would require a cyber charter school to make the enrollment policy publicly available on the school's web site. Section 713.5(d) sets forth data elements a cyber charter school must include in its annual report related to its number of total and qualified applicants and number of students offered and accepted enrollment in the most recent school year. This proposed rulemaking directly benefits students and ensures students have equal access to charter school education and are not discriminated against based on intellectual or physical ability or disability, as required under section 504 of the Rehabilitation Act of 1973, Title II of the ADA and the IDEA.

Both §§ 713.4(c)(4) and 713.5(c)(4) require charter schools, regional charter schools and cyber charter schools, when applicable, to make their enrollment policies accessible to the public, including to parents with limited English proficiency and individuals with a disability. This requirement is intended to ensure that all students and parents, including parents with limited English proficiency or individuals with disabilities, are able to access and understand the information, consistent with Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000a—2000h-6) and existing obligations to parents with disabilities under the ADA (42 U.S.C.A. §§ 12101—12213).

Proposed § 713.6 (relating to requirements for boards of trustees) seeks to promulgate regulations related to members of a charter school entity's board of trustees under sections 1715-A and 1716-A of the CSL (24 P.S. §§ 17-1715-A and 17-1716-A) (as applied to cyber charter schools in section 1749-A of the CSL). Under section 1715-A(11) of the CSL, members of a charter school entity's board of trustees are public officials. For clarity, § 713.6(a) confirms charter school entity's board of trustees are public officials subject to 65 Pa.C.S. §§ 1101—1113. Section 713.6(b) clarifies the requirement that trustee file a statement of financial interest with the charter school's board of trustees, State Ethics Commission and each authorizer of the charter school entity. Section 713.6(c)—(f) clarify that board of trustee members must recuse themselves from any selection, award, administration, or contract decisions that present a conflict of interest, may not engage in other activity that constitutes a conflict of interest, and sets forth the penalties imposed for violations.

Proposed § 713.7 (relating to fiscal management and audit requirements) seeks to promulgate regulations related to section 1729-A of the CSL (24 P.S. § 17-1729-A) (and applied to cyber charter schools in section 1749-A of the CSL), which requires a charter school entity to meet generally accepted standards of fiscal management and audit requirements or face nonrenewal or termination of its charter. In addition, section 1719-A(9) of the CSL (and

applied to cyber charter schools in section 1749-A of the CSL) requires a charter school application to include the provisions which will be made for auditing the school under section 437 of the School Code, which requires “[t]he accounts of the school treasurer shall be audited annually as hereinafter provided.” Section 713.7(a) clarifies that charter school entities must adhere to generally accepted standards of fiscal management and audit requirements. Subsections (b) and (c) set forth minimum requirements for charter school entities to satisfy those requirements, such as using Generally Accepted Accounting Principles (GAAP) and Generally Accepted Government Auditing Standards (GAGAS), and by obtaining independent annual financial audits. Section 713.7(c) identifies the components of those audits. Consistent standards of fiscal management and audit requirements will make it easier for charter school authorizers to annually assess a charter school entity’s operation and financial health, as required by the CSL.

Proposed § 713.8 (relating to redirection process) seeks to promulgate regulations pertaining to section 1725-A(a)(5) of the CSL (24 P.S. § 17-1725-A(a)(5)) (and applied to cyber charter schools in section 1749-A of the CSL). Under section 1725-A of the CSL, a charter school entity may request the Department redirect a school district’s subsidy to the charter school entity when the school district fails to pay the charter school entity for educating resident students. Subsection (a) requires charter school entities to invoice school districts at least 10 days before the 5th of each month. Subsection (b) requires school districts to make payment by the 5th of each month. Subsections (c) and (d) outline a process and timeline for charter school entities to submit redirection requests to the Department, including use of a standard form developed by the Department that includes information that will assist school districts with reconciling disputes. The process outlined in this proposed rulemaking will provide predictability and transparency for both charter schools and the school districts from which they are seeking payment by creating an orderly process whereby a charter school must submit enrollment information to the school district enables school districts to meet their statutory requirement to make payment by the 5th of each month. In addition, this proposed rulemaking clarifies the process when a school district fails to make payment and the charter school may submit a redirection request to the Department. Fewer redirection requests will allow the Department to realize cost savings and reallocate limited staff time to other urgent duties.

Proposed § 713.9 (relating to health care benefits) seeks to promulgate regulations related to section 1724-A of the CSL (24 P.S. § 17-1724-A) (as applied to cyber charter schools in section 1749-A of the CSL), which requires that every employee of a charter school be provided the same health care benefits the employee would receive if they worked for the chartering school district. Section 713.9 specifies how a charter school, regional charter school or a cyber charter school shall meet this statutory requirement and requires each charter school, regional charter school or cyber charter school to inform their employees of their legal right to the same health care benefits they would be provided if they were employees of the local district. Subsection (a) clarifies that a charter school is to provide the same health care benefits as the authorizing school district. Subsection (b) directs regional charter schools and cyber charter schools, which serve students from multiple school districts, to use the school district within which the regional charter school’s or cyber charter school’s administrative office is

located as the comparison. Subsections (c) and (d) require all charter schools, regional charter schools and cyber charter schools to inform employees of their health care options, including a comparison of what they would have been offered if they were employees of the local district. Subsection (e) affirms the right of the charter school entity’s authorizer to audit the health care benefits provided by the charter school entity under section 1724-A(d) of the CSL. Given the variations in health care plans, it is impossible for a charter school to offer an identical health care plan to its employees; health care plan contribution levels also differ by school entity and location. Therefore, § 713.9 does not require charter schools to spend a specific amount on health care plans or include specific benefits. Rather the proposed regulation only requires charter school employees have health care plans subsidized by their employer (that is, the charter school) to the same extent that district employees have their plans subsidized by their employer (that is, the school district). For example, if a school district employee and charter school employee both have coverage for a particular treatment, but the charter school employee pays more for that treatment than the school district employee, the charter school’s plan would not comply with section 1724-A(d) of the CSL because the health care plans are not meaningfully the same.

Affected Parties

This regulation affects the Department, all 500 school districts in this Commonwealth, the approximately 163 charter schools and regional charter schools currently in operation, 14 cyber charter schools currently authorized to operate in this Commonwealth, and any entity interested in establishing a charter school entity in this Commonwealth in the future; all current and future charter school entity boards of trustees and member trustees; educational management service providers hired by charter school entities; auditing and accounting firms in this Commonwealth contracted by charter school entities; and all current and future charter school entity employees.

Fiscal Impact

Implementation will not require additional staffing or costs for the Department. The Department expects to rely on previously established procedures and any burden in adapting those procedures to comply with the regulations would be negligible. Last year, the Department received approximately 14,000 redirection requests from charter school entities. It costs the Department approximately \$15 to process each redirection request. Processing these requests cost the Department an estimated \$210,000. This proposed rulemaking is expected to help the Department achieve efficiencies, as a more standard process for seeking and administering redirection requests can be expected to reduce the number of these redirection requests over time and allow for quicker resolution when redirection and reconciliation requests do occur. The Department conservatively estimates it will see 3,500 fewer requests at a total cost savings of \$52,500 a year.

For charter school entities that already align policies and practices with the CSL, the Department expects charter school entities will rely on currently established procedures and any burden in adapting those procedures to comply with the regulations would be negligible. For charter school entities where this is not the case, the proposed regulation may have practical costs or adverse financial effects. However, the Department does not an-

ticipate any greater cost or adverse effect to the charter school entity community as a whole, because of this proposed rulemaking.

To comply with the fiscal management and audit requirements, a charter school entity may need to contract with an accounting firm for an annual independent financial audit, which typically costs between \$20,000 and \$30,000. However, charter school entities are required to annually audit financial accounts in accordance with section 437 of the School Code and sections 1719-A and 1749-A. Furthermore, charter school entities that receive at least \$750,000 in Federal funds already contract with an auditing firm for an annual single audit. Currently, 148 charter school entities meet the minimum \$750,000 threshold.

There may be minor financial costs to charter school entities and school districts that use an information system to process invoices under the proposed redirection process. However, the process is not substantially different from how schools produce invoices currently. Based on the Department's experience, updating an accounting system costs around \$5,000.

There are no anticipated fiscal impacts to local governments.

Paperwork Requirements

For the Department, there are no additional legal, accounting or consulting procedures. The Department will need to develop a model charter school application and update the cyber charter application to reflect the requirements in this proposed rulemaking and post those applications online. The Department will need to revise the charter school redirection request form and update its electronic payment system to reflect the new redirection process. The applications and forms referenced in the regulation will be submitted electronically to the Department. Schools will complete the redirection form using the Charter School Redirection module within the Department's Consolidated Financial Reporting System (CFRS). The process is completely web-based, with no documentation submitted outside of CFRS.

For charter school entities that already align policies and practices with those of other public school entities, there will be no additional legal, accounting or consulting procedures, nor additional reporting, recordkeeping or other paperwork, including copies of forms or reports.

For charter school entities that will need to update policies and practices to implement the final-form rulemaking and comply with provisions of the CSL, there may be a need to contract with an accounting firm to implement the fiscal management and audit requirements or to implement an annual independent financial audit. However, any public school that receives at least \$750,000 in Federal funds already contracts with an auditing firm for an annual single audit. Under the American Rescue Plan (ARP) Act of 2021 (Pub.L. No. 117-2), all eligible school districts and charter school entities were allocated funding through the Elementary and Secondary School Emergency Relief Fund (ARP ESSER). All but 32 charter school entities are estimated to receive more than \$750,000 in Federal ARP ESSER funds beginning in spring 2021. Charter schools, regional charter schools and cyber charter schools also may need to develop policies related to enrollment procedures, post those policies on their web sites in an accessible format, and add the policies and procedures to the student application for their schools. They also may need to provide their policy to their authorizer. If a charter school

contracts with an educational management service provider, the provider may need to make available additional information for the charter school to meet the application requirements in § 713.2(c)(4)(iv).

School districts that authorize charter schools or regional charter schools may need to revise existing charter school applications and supporting materials, and charter school applicants may need to provide different information, in a different form, depending on the standard applications that are developed by the Department under § 713.2 of this proposed rulemaking.

For taxpayers and the public, the regulation carries no additional legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork, including copies of forms or reports.

Effective Date

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

Sunset Date

No sunset date is necessary. The Department will review on a regular basis in accordance with the Department's policy and practice respecting all its regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 8, 2021, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

Public Comments and Contact Person

Interested individuals and organizations may access the proposed regulations at www.education.pa.gov.

Interested persons and individuals affiliated with small businesses are invited to submit written comments, questions, suggestions, commendations, concerns or objections regarding this proposed rulemaking to the Division of Charter Schools at RA-EDCharterRegs@pa.gov. Alternatively if individuals are not able to submit comments electronically, comments may be mailed to the Division of Charter Schools, Department of Education, 333 Market Street, Harrisburg, PA 17126. Comments must be submitted within 30 days of publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

For further information contact Randy Seely, Division Chief, Division of Charter Schools, rseely@pa.gov, or Eric Levis, Deputy Policy Director, elevis@pa.gov.

NOE ORTEGA,
Secretary

Fiscal Note: 6-349. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 22. EDUCATION
PART XX. CHARTER SCHOOLS
CHAPTER 713. CHARTER SCHOOLS AND
CYBER CHARTER SCHOOLS

(Editor's Note: The following chapter is proposed to be added and printed in regular type to enhance readability.)

GENERAL PROVISIONS

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713.1. Definitions.

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713.2. Contents of charter school or regional charter school application.
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ENROLLMENT

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713.4. Random selection policies for a charter school or regional charter school.
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BOARDS OF TRUSTEES

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713.6. Requirements for boards of trustees.

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GENERAL PROVISIONS

§ 713.1. Definitions.

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

Authorizer—any of the following:

- (1) A board of school directors.
- (2) A board of public education of a school district.
- (3) The Department, for a cyber charter school.

Charter school—An independent public school established and operated under a charter from the local board of school directors or board of public education of a school district in which students are enrolled or attend. A charter school must be organized as a public, nonprofit corporation.

Charter school entity—A charter school, regional charter school, cyber charter school or multiple charter school organization.

Charter School Law—Article XVII-A of the Public School Code of 1949 (24 P.S. §§ 17-1701-A—17-1751-A).

Cyber charter school—An independent public school established and operated under a charter from the Department in which the school uses technology to provide a significant portion of its curriculum and to deliver a significant portion of instruction to its students through the Internet or other electronic means. A cyber charter school must be organized as a public, nonprofit corporation.

Department—The Department of Education of the Commonwealth.

Educational management service provider—A nonprofit or for-profit charter management organization, education management organization, school design provider, business manager or any other entity or individual that enters into a contract or agreement with a charter school entity to provide educational design, business services, management or personnel functions or to implement the charter. The term may not include a charter school foundation.

English learner—A student with limited English language proficiency who:

- (1) meets any of the following conditions:

(i) was not born in the United States or whose native language is other than English and comes from an environment where a language other than English is dominant;

(ii) is a Native American or an Alaska Native who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) is migratory and whose native language is other than English and comes from an environment where a language other than English is dominant; and

(2) has sufficient difficulty speaking, reading, writing or understanding the English language and whose difficulties may deny the individual the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in an English-speaking society.

Multiple charter school organization—A public, nonprofit corporation under the oversight of a single board of trustees and a chief administrator that operates two or more charter schools or regional charter schools under section 1729.1-A of the Charter School Law.

PAsecureID—A unique, permanent, anonymous State-wide student identification assigned to students upon their first entry into the Commonwealth's public school system.

Regional charter school—An independent public school:

- (1) established and operated under a charter from more than one local board of school directors or board of public education in which students are enrolled or attend; and
- (2) organized as a public, nonprofit corporation.

School Code—The Public School Code of 1949 (24 P.S. §§ 1-101—27-2702).

Secretary—The Secretary of Education of the Commonwealth.

APPLICATION REQUIREMENTS

§ 713.2. Contents of charter school or regional charter school application.

(a) An applicant seeking to operate a charter school or regional charter school shall submit an application on one of the following forms:

(1) The application form created by the Department, which includes the items identified in subsection (c).

(2) The application form created and adopted by an authorizer of a charter school or regional charter school, which at a minimum, includes the information identified in subsection (c).

(b) An authorizer may require an applicant to submit additional information for the local board of directors to evaluate the application in accordance with section 1717-A(e)(2) of the Charter School Law.

(c) The application forms in subsection (a) shall, at a minimum, include the following:

(1) Name, address, phone number and e-mail address of the charter school or regional charter school applicant.

(2) Name of the proposed charter school or regional charter school.

(3) For each grade or age level proposed to be served by the charter school or regional charter school:

(i) Projected overall enrollment.

(ii) Projected number of students receiving special education services by primary disability. Students may only be counted in one disability category.

(iii) Projected number of English learners.

(iv) Projected composition of the student population by race, ethnicity and students who are economically disadvantaged.

(4) Proposed governance structure of the charter school or regional charter school, including:

(i) Articles of incorporation filed with the Department of State.

(ii) Bylaws and operating agreement or equivalent document adopted by the applicant for the general governance of the charter school or regional charter school.

(iii) An organizational chart showing the proposed governance structure of the charter school or regional charter school, including lines of authority and reporting among the board of trustees, administrators, staff and any educational management service provider with which the charter school or regional charter school has contracted or intends to contract.

(iv) A description of the roles and responsibilities of the board of trustees, administrators, a charter school foundation, if applicable, and any other entities shown in the organizational chart, including any educational management service provider. This includes:

(A) A description of the process for appointing or electing of members of the charter school's or regional charter school's board of trustees.

(B) A description of the roles and responsibilities of the chief executive officer.

(C) A description of any additional administrative staff who may be employed by the charter school or regional charter school and their roles and responsibilities.

(D) The name of any foundation or other entity with which the school will be associated and its financial status (for example, an organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)).

(v) Standards for board of trustees' performance, including compliance with all applicable laws, regulations and terms of the charter.

(vi) If the charter school or regional charter school has contracted with or intends to contract with an educational management service provider, the following shall be provided:

(A) Evidence of the educational management service provider's record in serving student populations, including demonstrated academic achievement and growth.

(B) Demonstrated management of nonacademic school functions, including proficiency with public school-based accounting, if applicable.

(C) The final or proposed contract between the charter school or regional charter school and the educational management service provider.

(D) Names and contact information for the officers, chief administrator and administrators of the educational management service provider.

(E) Proposed duration of the service contract, for a term not to exceed the length of the charter term.

(F) Roles and responsibilities of the board of trustees, the charter school's or regional charter school's staff and the educational management service provider.

(G) The scope of services, personnel and resources to be provided by the educational management service provider.

(H) Methods of contract oversight and enforcement.

(I) Conditions for renewal and termination of the contract.

(J) The compensation structure, including clear identification of all fees to be paid to the educational management service provider, to include a total of fees expressed as a percentage of all school expenditures.

(K) Performance evaluation measures and timelines.

(L) Disclosure of any investment or planned investment or advance of moneys or planned advance of moneys by the educational management service provider on behalf of the charter school or regional charter school.

(M) Disclosure and explanation of any existing or potential conflicts of interest between the members of the board of trustees and the proposed educational management service provider.

(vii) If the charter school or regional charter school has or intends to have any affiliated business entities, including a charter school foundation qualified as a support organization under section 509(a)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 509(a)(3)), the charter school or regional charter school must provide a disclosure and explanation of any existing or potential conflicts of interest between the members of the board of trustees and the proposed affiliated business entities.

(5) Mission and education goals of the charter school or regional charter school, including:

(i) Mission, vision and program overview, including education purpose and demonstrated, sustainable support for the charter school or regional charter school.

(ii) Curriculum to be offered, including:

(A) Overview of instructional delivery model for all planned subjects.

(B) Pedagogical learning approach (for example, independent study, multi-age or grade level groupings, flexible student groupings, competency-based learning, multi-tiered support system).

(C) Plans for meeting the needs of at-risk students, including English learners and students with disabilities.

(iii) Methods of assessing whether students, including at-risk students such as English learners and students with disabilities, are meeting educational goals, including:

(A) Accountability, student assessment and evaluation.

(B) Student performance standards.

(C) High school graduation requirements, if applicable.

(6) Admission policy, including:

(i) Criteria for evaluating the admission of students in accordance with section 1723-A of the Charter School Law and this chapter.

(ii) Enrollment capacity by grade level.

(iii) A description of how the charter school or regional charter school will make all prospective students aware of the school's program.

(7) Procedures regarding suspension or expulsion of students, including:

(i) An explanation of the proposed philosophy on student discipline.

(ii) A copy of the charter school's or regional charter school's Student Code of Conduct.

(iii) An explanation of due process procedures that will be followed prior to administering any exclusionary discipline, including specifics for students with disabilities.

(iv) A description of how parents or guardians will be advised of students struggling in academic, social, emotional or behavioral performance.

(v) A description of how the charter school or regional charter school will assess and systematically address disparities in implementation of discipline practices among student groups.

(8) Information on how community groups will be involved in the charter school or regional charter school planning process.

(9) The financial plan for the charter school or regional charter school and the provisions for auditing the school under section 437 of the School Code and this chapter. This includes, but is not limited to:

(i) A proposed 5-year general fund budget by account code, in accordance with the Department's Chart of Accounts for PA Local Educational Agencies, that includes revenues and expenditures.

(ii) The anticipated sum of revenues and expenditures not accounted for in the account codes.

(iii) The budgeted fund balance for the proposed first year of operation and unrestricted fund balances for each year of the charter term.

(10) Procedures for reviewing and addressing complaints from parents, guardians and families regarding the operation of the charter school or regional charter school.

(11) The proposed school calendar for the charter school or regional charter school, including the length of the school day and school year consistent with the provisions of section 1502 of the School Code.

(12) A description and address of the physical facility in which the charter school or regional charter school will be located, the ownership of the physical facility and any lease arrangements, including:

(i) Whether the facility will be leased or owned.

(ii) Anticipated monthly mortgage or lease payments, and any estimated additional monthly payments (for example, utilities, property taxes and common space custodial services).

(iii) How the facility is suitable for the proposed school.

(iv) Square footage for each space where instruction of students will occur and a description of how the space

will be used (for example, kindergarten classroom, gymnasium for physical education and music instruction).

(v) Safety protocols for the facility.

(13) The proposed faculty and a professional development plan for the proposed faculty of the charter school or regional charter school that complies with Chapters 4 and 49 (relating to academic standards and assessment; and certification of professional personnel), including:

(i) The number of projected full-time equivalent employees in each of the following categories:

(A) Pupil personnel.

(B) Instructional personnel.

(C) Administration.

(D) Business office.

(E) Transportation.

(F) Public health.

(G) Operations.

(H) Management.

(ii) Caseloads of staff for students receiving special education services at appropriate levels to ensure a free appropriate public education as required under Chapter 711 (relating to charter school and cyber charter school services and programs for children with disabilities).

(iii) The charter school's or regional charter school's plan and process for providing ongoing professional development for all instructional staff members.

(14) A description and copies of agreements or plans with the charter school's or regional charter school's authorizer to allow the school's students to participate in extracurricular activities within the authorizing school district.

(15) The criminal history record, under section 111 of the School Code, for all individuals who will have direct contact with students.

(16) An official clearance statement regarding child injury or abuse from the Department of Human Services, as required under 23 Pa.C.S. § 6344 (relating to employees having contact with children; adoptive and foster parents), for all individuals who will have direct contact with students.

(17) A description of how the charter school or regional charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees of the charter school or regional charter school as required by section 1719-A of the Charter School Law, including a description of the type and level of insurance coverage the school will obtain (for example, general commercial liability, property, automobile, directors and operators, technology, workers compensation, liability under the Individuals with Disabilities Education Act and its implementing regulations, retirement liability and employee health insurance).

§ 713.3. Contents of cyber charter school application.

An applicant seeking to operate a cyber charter school shall submit an application on the application form created by the Department, which includes the items identified in § 713.2(c) (relating to contents of charter school or regional charter school application) and all provisions of section 17-1747-A of the Charter School Law.

ENROLLMENT**§ 713.4. Random selection policies for a charter school or regional charter school.**

(a) Within 3 months of the effective date of this chapter or upon the granting of a charter, a charter school or regional charter school shall enact a policy, approved by its board of trustees, to ensure random selection of students for enrollment should more students apply to the charter school or regional charter school than the number of attendance slots available.

(b) In the case of a charter school or regional charter school applicant, the proposed policy ensuring random selection of students for enrollment shall be included in the contents of the application under section 1719-A(6) of the Charter School Law.

(c) The policy identified in subsection (a) shall:

(1) Be posted on the charter school's or regional charter school's publicly accessible web site.

(2) Be included in any renewal application of a charter school or regional charter school.

(3) Describe the method to be utilized by the charter school or regional charter school to effectuate selection of students for enrollment on a random basis.

(4) Describe how the charter school or regional charter school will ensure public notice of the selection process. This notice shall be posted on the charter school's or regional charter school's publicly accessible web site in a language that students and parents can understand or, if not practicable, can be orally translated and upon request provided in an alternative format that is accessible to an individual with a disability.

(5) Detail any optional enrollment preferences for a child of a parent or guardian who has actively participated in the development of the charter school or regional charter school and to siblings of students presently enrolled in the charter school or regional charter school. Details must describe:

(i) The order in which preferences are implemented.

(ii) Any weighting associated with the preferences.

(6) Outline any admission limitations including for a particular grade level, a targeted population group composed of at-risk students, or areas of concentration of the school such as mathematics, science or the arts.

(d) A charter school or regional charter school shall include in the annual report submitted under section 1728-A of the Charter School Law and shall, at least annually, publish on its publicly accessible web site all of the following information:

(1) Number of total applicants to the charter school or regional charter school for the most recent school year.

(2) Number of qualified applicants as determined by the charter school or regional charter school for the most recent school year.

(3) Number of students offered enrollment by the charter school or regional charter school for the most recent school year.

(4) Number of students enrolled by the charter school or regional charter school for the most recent school year.

§ 713.5. Random selection policies for a cyber charter school.

(a) A cyber charter school may not restrict enrollment based on availability of attendance slots unless the terms

are agreed to by the Department and the cyber charter school as part of a written charter under sections 1723-A(d) and 1745-A of the Charter School Law.

(b) For cyber charter schools with enrollment terms agreed to by the Department and the cyber charter school as part of a written charter under section 1745-A of the Charter School Law a cyber charter school shall, within 3 months of the effective date of this chapter or upon the granting of a charter, enact a policy, approved by its boards of trustees and the Department, to ensure random selection of students for enrollment should more students apply to the cyber charter school than the number of attendance slots available.

(c) The policy identified in subsection (b) shall:

(1) Be posted on the cyber charter school's publicly accessible web site.

(2) Be included in any renewal application of a cyber charter school.

(3) Describe the method to be utilized by the cyber charter school to effectuate selection of students for enrollment on a random basis.

(4) Describe how the cyber charter school will ensure public notice of the selection process. The notice shall be posted on the cyber charter school's publicly accessible web site in a language that students and parents can understand or, if not practicable, can be orally translated and upon request provided in an alternative format that is accessible to an individual with a disability.

(5) Detail any optional enrollment preferences under section 1723-A of the Charter School Law for a child of a parent or guardian who has actively participated in the development of the cyber charter school and to siblings of students presently enrolled in the cyber charter school. The details shall describe all of the following:

(i) The order in which preferences are implemented.

(ii) Any weighting associated with the preferences.

(6) Outline any admission limitations under section 1723-A of the Charter School Law including for a particular grade level, a targeted population group composed of at-risk students, or areas of concentration of the school such as mathematics, science, or the arts.

(d) A cyber charter school shall include in the annual report submitted under section 17-1743-A(f) of the Charter School Law and shall, at least annually, publish on its publicly accessible web site the following data elements:

(1) Number of total applicants to the cyber charter school for the most recent school year.

(2) Number of qualified applicants as determined by the cyber charter school for the most recent school year.

(3) Number of students offered enrollment by the cyber charter school for the most recent school year.

(4) Number of students enrolled by the cyber charter school for the most recent school year.

BOARDS OF TRUSTEES**§ 713.6. Requirements for Boards of Trustees.**

(a) Each member of a board of trustees of a charter school entity is a public official subject to 65 Pa.C.S. §§ 1101—1113 (relating to Public Official and Employee Ethics Act).

(b) In accordance with 65 Pa.C.S. § 1104 (relating to statement of financial interests required to be filed), each member of a board of trustees of a charter school entity

shall file a statement of financial interest for the preceding calendar year with the board of trustees of the charter school entity, the State Ethics Commission, and each authorizer of the charter school entity. The member shall file the statement of financial interest no later than May 1 of each year the member holds the position and no later than May 1 of the year after a member leaves the position. If the member was appointed or selected after May 1, the member shall file a statement of financial interest in accordance with this section within 30 days of appointment or selection.

(c) No member of a board of trustees of a charter school entity may participate in the selection, award, or administration of any contract in violation of 65 Pa.C.S. § 1103 (relating to restricted activities) or if the member has a conflict of interest as that term is defined in 65 Pa.C.S. § 1102 (relating to definitions).

(d) A member of a board of trustees of a charter school entity who in the discharge of the member's official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and follow the procedures required under 65 Pa.C.S. § 1103(j).

(e) A member of a board of trustees of a charter school entity or family member of a member of a board of trustees of a charter school entity shall not, directly or through any other individual, entity, partnership or corporation in which the member holds stock or has a financial interest or other organization, provide a loan, forbearance or forgiveness of a loan or other debt, service or product or lease property to the charter school entity if such action is a conflict of interest as defined in 65 Pa.C.S. § 1102.

(f) A member of a board of trustees of a charter school entity who violates any provision of 65 Pa.C.S. §§ 1101—1113 shall be subject to the penalties imposed under the jurisdiction of the State Ethics Commission.

FISCAL AND AUDITING STANDARDS

§ 713.7. Fiscal management and audit requirements.

(a) Under section 1729-A of the Charter School Law, a charter school entity shall adhere to generally accepted standards of fiscal management and audit requirements.

(b) A charter school entity may satisfy the requirement in subsection (a) by meeting the following requirements:

(1) The financial statements of a charter school entity shall be prepared in accordance with Generally Accepted Accounting Principles as applied to governmental units and as established by the Governmental Accounting Standards Board.

(2) A charter school entity shall obtain an independent annual financial audit that follows Generally Accepted Government Auditing Standards, as issued by the Comptroller General of the United States, and Generally Accepted Auditing Standards, as issued by the American Institute of Certified Public Accountants.

(c) The following items shall be addressed in all audits completed under this section:

(1) A review of the charter school entity's enrollment records to demonstrate support for the invoices submitted to students' school districts of residence.

(2) A review of the fees charged by any educational management service provider with which the charter school entity has a contract, if applicable.

(3) A review of whether the charter school entity has the required number of certified staff.

(4) A review of the percentage of payroll the charter school entity contributed to employee retirement programs.

(5) A review of the charter school entity's financial expenditures to ensure compliance with the charter school entity's own financial policies.

REDIRECTION PROCESS

§ 713.8. Redirection process.

(a) Under section 1725-A(a)(5) of the Charter School Law, a charter school entity shall submit its payment request to the school district no later than 10 days before the 5th of each month to permit a school district time to make payment.

(b) A school district fails to make a payment under section 1725-A(a)(5) of the Charter School Law when the school district does not make payment to the charter school entity by the 5th of the month.

(c) If a school district fails to make a payment under subsection (b), a charter school entity may submit a request to the Secretary seeking to have the estimated amount withheld from State payments that will be made to the school district.

(d) A charter school entity that submits a request under subsection (c) shall submit the request on a form created by the Department. The form shall include all of the following information:

(1) For each student for which the charter school entity is seeking payment:

(i) PAsecureID.

(ii) Home address.

(iii) School district of residence.

(iv) Date of birth.

(v) Grade in which the student is enrolled at the charter school entity.

(vi) Date enrollment notification form was sent to school district of residence.

(vii) First day educated by the charter school.

(viii) Last day educated by the charter school, if applicable.

(ix) Special education status, if applicable.

(x) Date of current Individualized Education Plan (IEP), if applicable.

(xi) Date of prior IEP, if applicable.

(2) The source of the tuition rate used by the charter school entity in its withholding request to the Department.

(e) For the months from July through May, requests under this section must be submitted to the Department between the 15th and 25th of each month.

(f) Requests to the Secretary under this section may not include tuition for the month after the month in which the request was submitted.

(g) Requests under this section must be signed by the chief executive officer or other authorized individual of the charter school entity certifying that the estimated amounts requested are true and correct, and that a request was first made to the school district of residence,

subject to penalties of unsworn falsifications to authorities under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

SCHOOL STAFF

§ 713.9. Health care benefits.

(a) Under section 1724-A of the Charter School Law, a charter school shall meet the statutory requirement to provide its employees with the same health care benefits as they would be provided if they were an employee of the local school district. To implement this requirement and demonstrate that health care benefits provided by the charter school are meaningfully similar to those offered by the local school district, the charter school shall do one of the following:

(1) Provide health care coverage that:

(i) Provides benefits in each of the categories of benefits as described in section 1302(b) of the Patient Protection and Affordable Care Act (42 U.S.C.A. § 18022(b)) with substantially equivalent cost-sharing structure and plan type (such as preferred provider organization, exclusive provider organization or health maintenance organization) as the most-selected health care plan available to the employees of the charter school's authorizer.

(ii) Is funded by the charter school in an amount not less than the contribution provided by the charter school's authorizer for the most-selected health care plan available to the employees of the charter school's authorizer.

(2) Contribute to a tax-advantaged account which the employee may use to pay for the purchase of health care coverage, as permitted by Federal law, in an amount not less than the contribution provided by the charter school's authorizer for the (or, if more than one, the most-selected) health care plan available to the employees of the charter school's authorizer.

(b) Under section 1724-A of the Charter School Law (24 P.S. § 17-1724-A), a regional charter school or a cyber charter school shall provide its employees with the same health care benefits as they would be provided if they were employees of the local school district. To implement this requirement, and demonstrate that health care benefits provided by the regional charter school or cyber charter school are meaningfully similar to those offered by the local school district, the regional charter school or cyber charter school shall do one of the following:

(1) Provide health care coverage that:

(i) Provides benefits in each of the categories of benefits as described in section 1302(b) of the Patient Protection and Affordable Care Act, with substantially equivalent cost-sharing structure and plan type (such as preferred provider organization, exclusive provider organization, or health maintenance organization) as the most-selected health care plan available to employees of the school district within which the regional charter school's or cyber charter school's administrative office is located.

(ii) Is funded by the regional charter school or cyber charter school in an amount not less than the contribution provided by the school district within which the regional charter school's or cyber charter school's administrative office is located for the most-selected health care plan available to that school district's employees.

(2) Contributes to a tax-advantaged account which the employee may use to pay for the purchase of health care coverage, as permitted by Federal law, in an amount not less than the contribution provided by the school district

in which the regional charter school's or cyber charter school's administrative office is located for the most-selected health care plan available to that school district's employees.

(c) Charter schools, regional charter schools or cyber charter schools shall present health care benefit plan enrollment options to employees, including a comparison of what they would have been offered if they were employees of the local school district, at each enrollment period.

(d) The comparison required by subsection (c) shall include the following statement:

“UNDER PENNSYLVANIA LAW, CHARTER SCHOOLS, REGIONAL CHARTER SCHOOLS, AND CYBER CHARTER SCHOOLS ARE REQUIRED TO PROVIDE THE SAME HEALTH CARE BENEFITS TO THEIR EMPLOYEES AS THEY WOULD BE PROVIDED IF THEY WERE EMPLOYEES OF THE LOCAL DISTRICT. IF YOU BELIEVE THE PLAN OPTIONS MADE AVAILABLE TO YOU ARE NOT COMPARABLE TO THOSE OFFERED BY YOUR LOCAL DISTRICT, YOU MAY FILE A COMPLAINT WITH THE AUTHORIZER OR AUTHORIZERS OF THE CHARTER SCHOOL, REGIONAL CHARTER SCHOOL, OR CYBER CHARTER SCHOOL.”

(e) The authorizer of the charter school, regional charter school or cyber charter school may review the health care benefits policies of the charter school, regional charter school or cyber charter school.

[Pa.B. Doc. No. 21-1571. Filed for public inspection September 17, 2021, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 17]

Examinations

The State Board of Medicine (Board) proposes to amend §§ 16.1, 17.11, 17.12 and 17.12c to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 24(a) of the Medical Practice Act of 1985 (act) (63 P.S. § 422.24(a)) gives the Board authority to require an applicant to take and pass an examination to the satisfaction of the Board. Under section 24(d) of the act, when the Board accepts an examination given by an examining agency, the Board may establish the criteria for passing or may accept the criteria for passing established by the examining agency.

Section 8 of the act (63 P.S. § 422.8) authorizes the Board to adopt such regulations as are reasonably necessary to carry out the purposes of the act, including the licensure of qualified individuals as physicians.

Background and Need for Amendments

The Federation of State Medical Boards (FSMB) is a National non-profit organization representing all 71 state medical and osteopathic boards within the United States and its territories that license and discipline allopathic and osteopathic physicians and, in some jurisdictions,

other health care professionals. FSMB membership provides state medical boards, board members and staff with a variety of opportunities to expand their professional networks; gain access to valuable resources and relationships; and develop leadership roles in the field of medical regulation. The Board is an FSMB member board. The United States Medical Licensing Examination (USMLE) is the National examination co-sponsored and administered by the FSMB and the National Board of Medical Examiners (NBME).

The USMLE was created in response to the need for one path to medical licensure for allopathic physicians in the United States. Before the USMLE, multiple examinations (the NBME Parts examination and the Federation Licensing Examination (FLEX)) offered paths to medical licensure. It was desirable to create one examination system accepted in every state, to ensure that all licensed medical doctors (MD) pass the same assessment standards regardless of where individuals received education and training. Today, all state medical boards in the United States utilize the USMLE. The USMLE is used for licensure of graduates of accredited MD-granting medical schools in the United States and graduates of International Medical Schools recognized by the Education Commission for Foreign Medical Graduates (ECFMG).

While section 24(d) of the act authorizes the Board to establish, by regulation, a time period in which the entire examination must be successfully completed and a maximum number of examination attempts it will recognize for the purpose of receiving a passing score on an examination recognized but not given by the Board, it also authorizes the Board to accept the criteria for passing established by the examining agency (the FSMB and NBME). The Board has adopted the USMLE and has determined that accepting the FSMB and NBME criteria for passing the USMLE will ensure that Pennsylvania examination standards are consistent with National standards. Thus, the Board intends to rely on the FSMB and NBME established USMLE eligibility requirements, including the order in which the steps may be taken, the number of attempts permitted for any one step of USMLE, the time required in between attempts and the score necessary to pass each step.

In addition to updating its regulations to conform to the current National examination for medical licensure, the Board also considered existing regulatory provisions related to former medical licensure examinations and determined that some updates were necessary. While the Board's existing regulations refer to examinations that are no longer administered, the Board proposes updates to those provisions to ensure that the regulations appropriately reflect examination standards for those former examinations so that MDs who have taken those older examinations or combinations of the older examinations may apply for licensure or participate in graduate medical training in this Commonwealth.

Description of Proposed Amendments

In § 16.1 (relating to definitions), the Board proposes to amend the definition of "FLEX" and delete the definitions of "FLEX I" and "FLEX II." The FLEX has not been offered since 1993; therefore, detailed definitions of the FLEX are no longer necessary. The Board proposes to amend the definition of the "USMLE" to clarify that the USMLE includes a three-step examination, which replaced the two-component FLEX and NBME Parts examination. The Board proposes to delete the definitions of each of the three steps of the USMLE ("USMLE, Step 1;"

"USMLE, Step 2;" and "USMLE, Step 3"). The steps of the USMLE are subject to change and are established through the FSMB and NBME. For example, recently, in January of 2021, the two component Step 2, which formerly consisted of Step 2 Clinical Knowledge and Step 2 Clinical Skills, was modified by the FSMB and NBME to permanently discontinue the Step 2 Clinical Skills component.

The Board proposes to amend § 17.11(a) (relating to examination information for license without restriction) to delete the detailed description of the FLEX and to clarify that a passing score on a previously taken FLEX I and FLEX II, as outlined in subsection (a)(1)(ii), satisfies the requirement for a license without restriction. The FLEX I and FLEX II have not been offered since 1993 and have since been replaced with the nationally accepted USMLE. The FLEX examination, which consisted of two components and required a passing score on each component, remains a valid examination for licensure for those physicians who passed the examination prior to 1993, the date it was discontinued.

The Board proposes amendments to § 17.11(b) to delete details about the FSMB examination, which was offered from June 1968 through December 1984. The Board proposes to add language to clarify that this licensing examination, also called the FLEX, was the forerunner to FLEX I and FLEX II since no name for this examination is otherwise specified in the regulations. The FLEX forerunner remains a valid examination for licensure for those physicians who passed the three-part examination during June 1968 through December 1984, the dates it was administered. The Board proposes to add a cross reference to § 17.1(a)(1)(iii) to clarify passing scores for this examination and to specify that a passing score on the FLEX forerunner satisfies the examination requirement for a license without restriction.

The Board further proposes amendments to update examination requirements for the USMLE. In § 17.11(d), the Board proposes to clarify that the USMLE consists of Steps 1, 2 and 3 and that the USMLE is given throughout the year by the FSMB and NBME. The Board also proposes to delete outdated USMLE requirements, including the eligibility requirements to take each step of the USMLE. As set forth in the "Eligibility for the USMLE Requirements" in the USMLE Bulletin of Information, which may be found at <https://www.usmle.org/bulletin>, if an examinee does not pass Steps 1 and 2 of the USMLE, they are not eligible to sit for Step 3. The only eligibility requirement for Steps 1 and 2, which can be taken in any order, is that the examinee be officially enrolled in, or a graduate of, a United States or Canadian Medical School leading to an MD degree that is accredited by the Liaison Committee on Medical Education (LCME) or a medical school that is outside of the United States and Canada that meets the ECFMG eligibility requirements. Additionally, under the USMLE eligibility requirements, currently examinees become ineligible to take a step or step component if they have six or more prior attempts on that step or step component, including incomplete attempts. In July of 2021, the USMLE eligibility requirements will be modified. Under the updated requirements, an examinee will be ineligible to take a step or step component if the examinee has made four or more prior attempts on that step or step component, including incomplete attempts. This policy change will reduce the total number of attempts an examinee may take per step or step component from six to four.

The Board proposes to delete § 17.12 (relating to failure on the FLEX I or FLEX II), because information

relating to failures on the FLEX I and FLEX II is no longer necessary since the examination has not been offered since 1993.

The Board proposes to delete § 17.12c (relating to failure on USMLE) in its entirety because the language is outdated and is addressed in other sections of the Board's current regulations and proposed regulations. Section 17.12c(a) relates the retaking of the USMLE and the time period for passing the entire examination. The 7-year period is currently outlined in § 17.1(a)(1)(ii) and it is not necessary to repeat it here. Section 17.12c(b) relates to the number of attempts for Step 3 of the USMLE. This information is outdated and has been updated in § 17.11(d). Section 17.12c(c) is also outdated. The Board has determined that it is not necessary to update this provision because the Board already outlines which step of the USMLE must be successfully completed before advancing in graduate medical training as outlined in § 17.5 (relating to graduate license). For example, under § 17.5(d), to participate in graduate medical training at a second-year level, the licensee shall secure a passing score on Step 1 and Step 2 of the USMLE. Under § 17.5(e), to participate in graduate medical training at a third-year level or higher, the licensee shall secure a passing score on Steps 1, 2 and 3 of the USMLE (or a combination of previously administered examinations). The Board relies on § 17.5 as it relates to passing examination scores and advancing in graduate training. Therefore, it is unnecessary to repeat this information here.

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will not have any fiscal impact on licenses, the Board or the Commonwealth, nor is any additional paperwork anticipated.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 2, 2021, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), and the House Professional Licensure Committee (HPLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Board Counsel, State Board of Medicine, P.O. Box 69523, Harrisburg, Pennsylvania, 17106-5923, RA-STRegulatoryCounsel@pa.gov within

30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference 16A-4948 (Examinations) when submitting comments.

MARK B. WOODLAND, MS, MD,
Chairperson

Fiscal Note: 16A-4948. 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 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter A. BASIC DEFINITIONS AND INFORMATION

§ 16.1. Definitions.

The following words and terms, when used in this chapter and Chapters 17 and 18 (relating to State Board of Medicine-medical doctors; and State Board of Medicine-practitioners other than medical doctors), have the following meanings, unless the context clearly indicates otherwise:

* * * * *

ECFMG—The Educational Commission for Foreign Medical Graduates.

FLEX—[This examination provided by the Federation of State Medical Boards of the United States, Inc., comprised of FLEX I and FLEX II, was used by the Board to test applicants for a license to practice medicine and surgery without restriction. This uniform examination was administered simultaneously in most of the states, territories and possessions of the United States] The Federation Licensing Examination, which was used by the Board to test applicants for a license to practice medicine and surgery without restriction. The examination was comprised of two components, FLEX I and FLEX II. The last regular administration of FLEX I and FLEX II was in December 1993.

[*FLEX I*—The examination component of the FLEX designed to evaluate measurable aspects of knowledge and understanding of basic and clinical science principles and mechanisms underlying disease and modes of therapy. This component will be last regularly administered in December 1993.

FLEX II—The examination component of the FLEX designed to measure a core of competence involved in the diagnosis and management of selected clinical problems frequently encountered by a physician engaged in the independent practice of medicine. This component will be last regularly administered in December 1993.]

Federation—The Federation of State Medical Boards of the United States, Inc.

* * * * *

Treatment regimen—The provision of care and practice of a component of the healing arts by a Board-regulated practitioner.

USMLE—The United States Medical Licensing Examination, a single, uniform examination for medical

licensure consisting of three steps. The examination is provided by the Federation of State Medical Boards (FSMB) and the National Board of Medical Examiners (NBME) and replaces the FLEX and the NBME National Boards Parts examination.

[*USMLE, Step 1*—Assesses whether an examinee understands and can apply key concepts of basic biomedical science, with an emphasis on principles and mechanisms of health, disease and modes of therapy.

USMLE, Step 2—Assesses whether an examinee possesses the medical knowledge and understanding of clinical science considered essential for the provision of patient care under supervision, including emphasis on health promotion and disease prevention.

USMLE, Step 3—Assesses whether an examinee possesses the medical knowledge and understanding of biomedical and clinical science considered essential for the unsupervised practice of medicine.]

Unaccredited medical college—An institution of higher learning which provides courses in the arts and sciences of medicine and related subjects, is empowered to grant professional and academic degrees in medicine, is listed by the World Health Organization or is otherwise recognized as a medical college by the country in which it is situated, and is not accredited by an accrediting body recognized by the Board.

CHAPTER 17. STATE BOARD OF MEDICINE—MEDICAL DOCTORS

Subchapter B. EXAMINATION INFORMATION

§ 17.11. Examination information for license without restriction.

(a) *FLEX*. [This is the examination offered by the Board for a license without restriction. The last regular administration of FLEX I and FLEX II was in December 1993. The examination is comprised of two components—FLEX I and FLEX II. Both components are given every December and June. FLEX I may be taken after graduating from a medical college but, beginning July 1, 1986, shall be passed prior to commencing a second-year level of graduate medical training if the medical doctor has not already passed Parts I and II of the National Boards or a licensing examination acceptable to the Board under § 17.1(a)(1)(iii), (viii) and (ix) (relating to license without restriction), or secured a license without restriction in this Commonwealth or an equivalent license issued by a state, territory or possession of the United States or the Dominion of Canada. FLEX II may be taken after graduating from a medical college but, for a medical doctor to begin a third-year level of graduate medical training he shall first pass FLEX I and FLEX II or a licensing examination acceptable to the Board under § 17.1(a)(1)(iii), (viii) and (ix), or have secured a license without restriction in this Commonwealth or an equivalent license issued by another state, territory or possession of the United States or the Dominion of Canada. Both FLEX I and FLEX II may be taken by a student in a medical college if the student is in the last semester or a similar school term, the dean of the medical college certifies to the Board that the student's graduation is imminent and the semester or similar school term will

conclude shortly after the administration of FLEX I and FLEX II.] A passing score on [this examination] FLEX I and FLEX II, as outlined in § 17.1(a)(1)(ii) (relating to license without restriction), satisfies the examination requirement for a license without restriction.

(b) *Licensing examination of Federation from June 1968 through December 1984*. [This examination is the forerunner of the present FLEX.] This three-part examination, also called the FLEX, is the forerunner of the two-component FLEX provided for under subsection (a). A passing score on this three-part examination, as outlined in § 17.1(a)(1)(iii), satisfies the examination requirement for a license without restriction. [This examination is no longer offered as a licensing examination by the Board. A passing score on this examination shall have been achieved in an individual attempt, that is, a passing score cannot be achieved by combining scores received on separate parts of the examination obtained in more than one examination attempt.]

(c) *National Boards*. This examination comprised of Parts I, II and III was given in most accredited medical colleges. A passing score on this examination satisfies the examination requirement for a license without restriction.

(d) *USMLE*. This examination is a uniform examination for licensure which replaces the National Boards Parts I, II and III and FLEX I and FLEX II. [Each step is given twice a year. To be eligible for Step 1 or 2 of the examination, an individual shall be a medical student officially enrolled in, or a graduate of, an accredited medical school or a graduate of an unaccredited medical school. Steps 1 and 2 may be taken in any sequence. To be eligible for Step 3 of the USMLE, the individual shall have obtained a medical doctor degree or equivalent, shall have achieved a passing score on both Step 1 and Step 2 or equivalent, and shall be enrolled in a graduate medical training program. Additionally, a graduate of an unaccredited school shall be currently certified by ECFMG or shall have successfully completed a "Fifth Pathway" program. All Steps of the examination shall be completed within 7 years.] Steps 1, 2 and 3 of USMLE are given throughout the year at times and places designated by the FSMB and NBME. USMLE eligibility requirements for each step or step component of the USMLE are jointly set by the FSMB and NBME. A passing score on [this examination] all three steps of USMLE, as determined by FSMB and NBME and as outlined in § 17.1(a)(1)(i), satisfies the examination requirement for a license without restriction.

(e) *Examination of the Medical Council of Canada*. This is an examination offered in Canada which has been adopted as a licensing examination in most of the provinces of Canada. A passing score on this examination, as determined by the Medical Council of Canada, satisfies the examination requirement for a license without restriction if the examination was taken in English in or after May 1970.

(f) *State Board Examination*. This is an examination for a license to practice medicine and surgery without restriction, other than USMLE, FLEX or the forerunner of FLEX, which is used by a licensing authority in another state, territory or possession of the United States. A passing score on this examination, as determined by the licensing authority in the other jurisdiction,

satisfies the examination requirement for a license without restriction if the examination was taken in English prior to December 1973.

§ 17.12. [**Failure on FLEX I or FLEX II**] **Reserved.**

[(a) *Retaking examination.* An individual who fails either FLEX I or FLEX II is permitted to retake that component of the FLEX in this Commonwealth after the expiration of 6 months and within 2 years from the prior examination date.

(b) *Repeating year of graduate medical training.* If an individual fails to secure a passing grade on FLEX I in a second attempt, the individual shall repeat a year of graduate medical training at a first-year level before retaking FLEX I in this Commonwealth. If the individual fails to secure a passing grade on FLEX II in a second attempt, the individual shall repeat a year of graduate medical training at a first or second-year level before retaking FLEX II in this Commonwealth.

(c) *Awaiting examination results.* Effective July 1, 1986, if an individual scheduled to go into a second-year level of graduate medical training is awaiting the FLEX I score, the individual may not begin training at a second-year level until the individual has notified the Board that FLEX I has been passed, and the Board has issued the appropriate license, but may continue to train at a first-year level until that time, if the individual has renewed the first-year level license. An individual scheduled to go into a third-year level of graduate medical training who is awaiting the FLEX II score, may not begin training at a third-year level until the individual has notified the Board that FLEX II has been passed, and the Board has issued the appropriate license, but may continue to train at a first or second-year level until that time, if the individual has renewed the first or second-year level license.]

§ 17.12c. [**Failure on USMLE**] **Reserved.**

[(a) *Retaking examination.* An individual is permitted to retake any component of the USMLE. Steps 1, 2 and 3 shall be completed within a 7-year period. Because Steps 1 and 2 may be taken in any sequence, the 7-year period begins with the passage of the first step taken.

(b) *Repeating year of graduate medical training.* If an individual fails to secure a passing score on Step 3 in a third attempt, the individual shall repeat a year of graduate medical training at a first or second-year level before retaking Step 3.

(c) *Awaiting examination results.* If an individual scheduled to go into a second-year level of graduate medical training is awaiting examination scores, the individual may not begin training at a second-year level, but may continue to train at a first-year level, if the individual has renewed the first-year level license, until the individual has notified the Board that Steps 1 and 2 have been passed and the Board has issued the appropriate license. If an individual scheduled to go into a third-year level of graduate medical training is awaiting examination scores, the individual may not begin training at a third-year level, but may continue to train at a first or second-year level, if the individual has renewed the first or second-year level license, until the

individual has notified the Board that Step 3 has been passed and the Board has issued the appropriate license.]

[Pa.B. Doc. No. 21-1572. Filed for public inspection September 17, 2021, 9:00 a.m.]

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

License by Endorsement

The State Board of Optometry (Board) proposes to add §§ 23.27, 23.27a and 23.27b (relating to definitions; license by endorsement; and provisional endorsement license) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 3111 of 63 Pa.C.S. (relating to licensure by endorsement) requires licensing boards and commissions to issue a license, certificate, registration or permit to an applicant to allow practice in this Commonwealth provided the applicant meets the following criteria: holds a current license, certificate, registration or permit from another state, territory or country whose licensing requirements are substantially equivalent to or exceed the requirements in this Commonwealth; demonstrates competency; has not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice that profession or occupation in this Commonwealth, unless the board or commission determines such conduct is not an impediment to granting the license, certificate, registration or permit; is in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit, unless the board or commission determines such conduct is not an impediment to granting the license, certificate, registration or permit; and the applicant pays fees, as established by regulation. Additionally, 63 Pa.C.S. § 3111 authorizes boards and commissions to issue a provisional license, certificate, registration or permit while an applicant is satisfying remaining requirements for licensure by endorsement, for which the Board must set by regulation the terms of expiration. Additionally, section 3(b)(14) of the Optometric Practice and Licensure Act (act) (63 P.S. § 244.3(b)(14)) provides the Board with authority to promulgate all rules and regulations necessary to carry out the purposes of the act.

The act of July 1, 2020, (P.L. 575, No. 53) added 63 Pa.C.S. § 3111 as part of the consolidation of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) into 63 Pa.C.S. Chapter 31 (relating to powers and duties). The text of 63 Pa.C.S. § 3111 was originally added to Act 48 by the act of July 1, 2019 (P.L. 292, No. 41) (Act 41).

Background and Need for the Amendments

This proposed rulemaking is needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license, certificate, registration or permit to applicants who meet the requirements for licensure by endorsement as set forth in 63 Pa.C.S. § 3111. Under 63 Pa.C.S. § 3111, the Board must determine whether standards for licensure are substantially equivalent to or exceed those

established by the Board. Additionally, 63 Pa.C.S. § 3111 requires the Board to determine the methods of competency, including completion of continuing education or experience in the profession or occupation for at least 2 of the 5 years preceding the date of the application, and must establish, by regulation, the expiration of a provisional endorsement license. This proposed rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license.

Description of the Proposed Amendments

The Board proposes to add § 23.27 which will set forth the definition of “jurisdiction” consistent with 63 Pa.C.S. § 3111. Proposed § 23.27a requires an applicant to provide proof that the applicant meets seven criteria required for licensure by endorsement. The first criterion, as set forth in proposed subsection (a)(1), requires an applicant to provide proof of a current license, certification, registration or permit in good standing to practice in another jurisdiction whose standards are substantially equivalent to or exceed those established by the Board under section 4 of the act (63 P.S. § 244.4). Proposed subsection (a)(1) further requires an applicant to submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit. This proposed rulemaking would also require that the copy of the applicable law, regulation or other rule include the enactment date. Additionally, because 63 Pa.C.S. § 3111 is applicable to territories and other countries that use languages other than English, where the applicable law, regulation or other rule is in a language other than English, the Board would require, at the applicant’s expense, translation of the applicable law, regulation or other rule by a professional translation service.

Proposed subsection (a)(2) requires demonstration of competency. Under this provision, an applicant must provide proof of competency by demonstrating experience in the practice of the profession, completion of continuing education or achievement of a passing score in a Board-approved skills examination. Regarding experience, an applicant must demonstrate active engagement in the practice of profession for at least 2 of the 5 years immediately preceding the date of the application in the jurisdiction that issued the license, certificate, registration or permit. Regarding continuing education, an applicant must submit proof of completion of 30 hours of continuing education which meets the requirements of §§ 23.82 and 23.83 (relating to continuing education hour requirements; continuing education reporting; audit and enforcement; and continuing education subject matter). The continuing education must be completed during the 24 months immediately preceding the date of the application. The Board proposes completion of the continuing education within 24 months immediately preceding the date of the application because a 24-month limitation correlates with the Board’s biennial renewal continuing education requirement. Regarding a skills examination, within 2 years immediately preceding the date of the application, the applicant must have achieved a passing score on the National Board of Examiners in Optometry Clinical Skills Assessment Examination or its equivalent, as determined by the Board.

Proposed subsection (a)(3) and (4) incorporate the statutory prohibitions in 63 Pa.C.S. § 3111 pertaining to

conduct that would constitute grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice the profession or occupation, and prior discipline by the jurisdiction that issued the license.

Proposed subsection (a)(5) provides for payment of an application fee, as required under 63 Pa.C.S. § 3111(a)(5). The applicable fee for licensure by endorsement under 63 Pa.C.S. § 3111 is the license application fee in § 23.91 (relating to fees) of the Board’s current fee schedule (\$25). Next, proposed subsection (a)(6) requires applicants to apply for licensure in accordance with Chapter 23, in the manner and format prescribed by the Board.

Finally, proposed subsection (a)(7) requires completion of 3 hours of training in child abuse recognition and reporting, which is mandated continuing education under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training), known as the Child Protective Services Law.

Under proposed § 23.27a(b) the Board may require a personal interview or additional information to assist the Board in determining eligibility and competency. When a personal interview is necessary, to the extent practicable, the Board intends to offer flexibility in the manner in which an interview is conducted to include teleconference or video conferencing.

Consistent with 63 Pa.C.S. § 3111(a)(3) and (4), proposed § 23.27a(c) authorizes the Board in its discretion to determine that an act prohibited under section 7 of the act (63 P.S. § 244.7), §§ 23.61–23.65 (relating to unlawful practices) or disciplinary action by a jurisdiction is not an impediment to licensure.

Consistent with section 63 Pa.C.S. § 3111(b), proposed § 23.27b provides that the Board, in its discretion, may issue a provisional endorsement license while an applicant is satisfying remaining requirements under 63 Pa.C.S. § 3111 and proposed § 23.27a. Proposed § 23.27b(b) sets the expiration of a provisional endorsement license at 1 year, unless the Board determines that an expiration date of less than 1 year is appropriate. Additionally, upon a written request, the Board may extend the term of the license upon a showing of good cause. Proposed § 23.27b(c) sets forth reasons for which a provisional endorsement license will be terminated by the Board, including when the Board denies a license, or the provisional endorsement licensee fails to comply with the terms of a provisional endorsement license. Finally, proposed § 23.27b(d) clarifies that while an individual may reapply for a license by endorsement under proposed § 23.27a, the Board will not issue a subsequent provisional endorsement license to an applicant who previously held a provisional endorsement license that expired or was terminated.

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The costs to the Board related to processing applications for licensure by endorsement will be recouped through fees paid by applicants. Applicants who apply for licensure by endorsement will be impacted by the \$25 application fee in § 23.91 and may incur continuing education expenses or examination expenses if they choose to demonstrate competency by completion of continuing education or through examination. Applicants must complete child abuse recognition and reporting training, as required under 23 Pa.C.S. § 6383(b)(3)(i). There are free in-person and online child abuse recognition and reporting training options available; therefore, the Board does not anticipate a negative fiscal impact for this statutorily mandated training.

Sunset Date

The Board continuously monitors the cost effectiveness of the Board's 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 September 2, 2021, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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, recommendations or objections regarding this proposed rulemaking to the Board Counsel, P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail at RA-STRegulatoryCounsel@pa.gov within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference 16A-5218 (Licensure by Endorsement), when submitting comments.

LUANNE K. CHUBB OD, FAAO,
Chairperson

Fiscal Note: 16A-5218. 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 23. STATE BOARD OF OPTOMETRY
LICENSE BY RECIPROCITY AND INTERSTATE
CERTIFICATION**

(*Editor's Note:* The following sections are proposed to be added and are printed in regular type to enhance readability.)

§ 23.27. Definitions.

The following word or term, when used in § 23.27a (relating to license by endorsement) has the following meaning, unless the context clearly indicates otherwise:

Jurisdiction—A state, territory or country.

§ 23.27a. License by endorsement.

(a) *Requirements for issuance.* To be issued a license by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement), an applicant must satisfy all of the following conditions:

(1) Have a current license, certification, registration or permit in good standing to practice optometry in another

jurisdiction whose standards are substantially equivalent to or exceed those established under section 4 of the act (63 P.S. §§ 244.4) and §§ 23.11—23.15, 23.202 and 23.205. The following apply:

(i) An applicant must submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit.

(ii) If the applicable law, regulation or other rule is in a language other than English, at the applicant's expense, the applicable law, regulation or other rule shall be translated by a professional translation service and verified to be complete and accurate.

(iii) The copy of the applicable law, regulation or other rule must include the enactment date.

(2) Demonstrate competency by one of the following:

(i) Experience in the practice of optometry by demonstrating, at a minimum, that the applicant has actively engaged in the practice of optometry in the jurisdiction that issued the license, certificate, registration or permit for at least 2 of the 5 years immediately preceding the filing of the application with the Board.

(ii) Completion of 30 hours of continuing education that meets the requirements of §§ 23.82 and 23.83 (relating to continuing education hour requirements; continuing education reporting; audit and enforcement; and continuing education subject matter) during the 24 months immediately preceding the date of the application.

(iii) Achieve a passing score on the NBEO Clinical Skills Assessment Examination or its equivalent, as determined by the Board, within 2 years immediately preceding the date of the application.

(3) Have not committed any act prohibited by section 7 of the act (63 P.S. § 244.7) or §§ 23.61—23.65 (relating to unlawful practices).

(4) Have not been disciplined by the jurisdiction that issued the license, certificate, registration or permit.

(5) Pay the license application fee as required by § 23.91 (relating to fees).

(6) Apply for licensure in accordance with this chapter in the manner and format prescribed by the Board.

(7) Complete 3 hours of training in child abuse recognition and reporting from a provider approved by the Department of Human Services as required under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training).

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and may be requested to submit additional information, including supporting documentation relating to competency and experience. The applicant may request the interview to be conducted by video teleconference for good cause shown.

(c) *Prohibited acts.* Notwithstanding subsection (a)(3) and (4), the Board may, in its discretion, determine that an act prohibited under section 7 of the act or §§ 23.61—23.65, or disciplinary action by a jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

§ 23.27b. Provisional endorsement license.

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to

an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement) and § 23.27a (relating to license by endorsement).

(b) *Expiration of a provisional endorsement license.*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon a written request and a showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates upon either of the following:

(1) The Board denies the license.

(2) The license holder fails to comply with the terms of the provisional endorsement license.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 23.27a after expiration or termination of a provisional endorsement license, but the individual may not be issued a subsequent provisional endorsement license.

[Pa.B. Doc. No. 21-1573. Filed for public inspection September 17, 2021, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating; Special Regulations Counties

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates the Commission's regulations pertaining to Shenango River Lake, located in Mercer County.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The proposed amendment to § 111.43 (relating to Mercer County) is published under the statutory authority of section 5124(a) of the code (relating to particular areas of water).

D. Purpose and Background

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

Shenango River Lake is a 3,560-acre flood control project managed by the United States Army Corps of Engineers (USACE) in Mercer County. This busy boating destination is regulated by § 111.43. Shenango River Lake has several specific regulations that deviate from the Statewide recreational boating regulations when boating on project waters. Specifically, subsection (a)(1) states that "the use of motors in excess of 10 horsepower are prohibited in the area west of the Penn Central Railroad (Levittsburg) causeway to the Ohio line."

Recently USACE leadership has changed local policy/regulation adopting a 20 horsepower restriction west of the causeway. USACE leadership has petitioned the Commission to make the same change to § 111.43 so Waterways Conservation Officers can continue to assist in enforcement. The proposed amendment was approved by the Boating Advisory Board at their June 23, 2020, meeting.

The Commission proposes that § 111.43 be amended to read as set forth in Annex A.

F. Paperwork

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-316. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart C. BOATING
CHAPTER 111. SPECIAL REGULATIONS
COUNTIES**

§ 111.43. Mercer County.

(a) *Shenango River Lake.*

(1) The use of motors in excess of [10] 20 horsepower is prohibited in the area west of the Penn Central Railroad (Levittsburg) causeway to the Ohio line.

* * * * *

[Pa.B. Doc. No. 21-1574. Filed for public inspection September 17, 2021, 9:00 a.m.]