

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

Child Abuse Reporting Requirements

The State Board of Funeral Directors (Board) amends §§ 13.11, 13.77, 13.231, 13.301—13.307 and 13.401, and adds §§ 13.308 and 13.309 (relating to child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 16(a) of the Funeral Director Law (63 P.S. § 479.16(a)) sets forth the Board's general rulemaking authority. Under sections 6301—6388 of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL), specifically, section 6383(b)(2) of the CPSL, the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees of the Board.

Purpose and Explanation

Since 2014, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on many professional and occupational licensing boards, including the Board, to require training in child abuse recognition and reporting for licensees who are considered “mandated reporters” under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license or certificate, or applying for renewal of a license or certificate, on or after January 1, 2015. The Board implemented the training requirements as mandated at the beginning of 2015 and subsequently proposed this rulemaking to update the Board's existing regulations on the subject of child abuse reporting to be consistent with the CPSL, as amended.

The proposed rulemaking was published at 51 Pa.B. 1320 (March 13, 2021) for 30 days of public comment, but no public comments were received. The Independent Regulatory Review Commission (IRRC) submitted comments on May 12, 2021. The House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. The following represents a summary of IRRC's comments and the Board's response.

Summary of IRRC's Comments and the Board's Response

First, IRRC points out that the proposed rulemaking did not address funeral directors who hold limited licenses under § 13.77 (relating to limited license). Noting that funeral directors are mandated reporters under 23 Pa.C.S. § 6311(a)(2) (relating to persons required to report suspected child abuse), IRRC asked the Board to explain how the child abuse recognition and reporting training and continuing education requirements will be implemented for these funeral directors. Further, IRRC

asked the Board to consider clarifying the requirements for limited license funeral directors or explain why it is not necessary to do so.

The Board agrees that limited license holders are considered mandated reporters and are subject to the training and continuing education requirements. The failure to include amendments to § 13.77 in the proposed rulemaking was merely an oversight, which is corrected in this final-form rulemaking. At the present time, the Board has reciprocal agreements with Delaware, New Jersey and West Virginia, and there are approximately 119 limited license holders. IRRC also asked the Board to include this information in the Regulatory Analysis Form (RAF) when submitted with this final-form rulemaking. The Board includes this information.

Next, IRRC noted that it would improve clarity if the specifically-defined term “person responsible for the child's welfare” in § 13.301 (relating to definitions relating to child abuse reporting requirements) were used in subparagraphs (i)(D) and (ii)(D) of the definition of “perpetrator,” which is limited to individuals of certain ages who are responsible for the child's welfare. The Board agrees and makes the suggested amendment.

With regard to § 13.302 (relating to suspected-child abuse—mandated reporting requirements), IRRC pointed out that the proposed rulemaking did not include the provisions of 23 Pa.C.S. § 6311(b)(2) and (3), which clarify that the duty to report includes the responsibility to report suspected child abuse even when the child has not come before the mandated reporter or when the identity of the person responsible for the child abuse is not known. IRRC asked the Board to add the omitted statutory provisions or explain why it is unnecessary to do so. The Board agrees that the omitted language clarifies the duty to report and adds it to this final-form rulemaking.

Similarly, IRRC noted that some language from 23 Pa.C.S. § 6314 (relating to photographs, medical tests and X-rays of child subject to report) was not included in § 13.303 (relating to photographs, medical tests and X-rays of child subject to report). The omitted language requires mandated reporters to make these types of materials available to law enforcement officials in the course of investigating cases of alleged child abuse. For consistency, IRRC suggested that the Board add this statutory language to this final-form rulemaking or explain why it is not necessary to do so. Upon review, the Board agrees that this language would aid clarity and avoid ambiguity. Therefore, the Board adds it to this final-form rulemaking.

Next, IRRC noted that § 13.306 (relating to confidentiality—waived) was not amended to include the requirements in 23 Pa.C.S. § 6311.1 (relating to privileged communications) which provides that privileged communications between a mandated reporter and a client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. IRRC asked the Board to explain why the requirement was not included in the regulation. IRRC further asked the Board to consider adding this provision or explain why it is unnecessary to do so. Further, IRRC suggests that, if this section is not being amended, it should not be included in this final-form rulemaking.

The Board did not initially include this provision because there is no recognized privilege under Commonwealth law with regard to communications between a funeral director and a client. However, upon review, the Board considered the possibility that another recognized privilege may apply and determined that adding the omitted language would serve to protect the public health and safety. For this reason, the Board amends § 13.306 to include the omitted language.

With regard to § 13.308(a) (relating to child abuse recognition and reporting—mandatory training requirement), IRRC noted that, unlike subsection (b), subsection (a) does not include the implementation procedures for submission of proof of the 3 hours of approved training which is a prerequisite to licensure. IRRC asked the Board to revise this subsection to include the implementation procedures. In response, the Board amends subsection (a) to make it clear that individuals applying for a license shall have completed at least 3 hours of training which has been approved by both the Department of Human Services and the Bureau of Professional and Occupational Affairs, as set forth in § 13.309 (relating to child abuse recognition and reporting course approval process). The Board also clarifies the process for an applicant to certify that the applicant has either completed the required training or has been granted an exemption under subsection (c) and that the Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption.

IRRC expressed three concerns with § 13.308(c)(3), pertaining to exemptions from the training or continuing education requirements for individuals who demonstrate that they should not be subject to these requirements. First, IRRC noted that the standards for documentation and evaluation of exemption requests are vague. Second, this subsection does not specify if the exemption is limited to one biennial renewal period. Third, the process for notification of approval or denial of the exemption is not included in the proposed rulemaking. IRRC asked the Board to address these concerns in this final-form rulemaking.

It is difficult to set standards for documentation that would apply to all situations in which an exemption would be appropriate. For example, it may include documentation that the licensee is an approved trainer in the area of child abuse recognition and reporting. Another example might be a licensee who volunteers as a Court-appointed Special Advocate for children who are victims of abuse or neglect. These individuals are required to complete at least 30 hours of preservice training and 12 hours of annual in-service training. See 37 Pa. Code § 200.221 (relating to training). Generally, the Board evaluates these requests to determine whether the 2 or 3 hours of training in the area of child abuse recognition and reporting would be duplicative of other training the individual has completed or is unnecessary under the circumstances.

In response to IRRC's comment, the Board amends subsection (c)(3) to clarify these standards. The Board adds subsection (d) to clarify that exemptions granted under subsection (c) are only applicable for the biennial renewal period for which the exemption is requested. The Board explains the process for notifying applicants/licensees of the grant or denial of an exemption request in subsection (d). If an exemption is granted, the license will be issued or renewed. If an exemption is denied, the

applicant or licensee will receive a discrepancy notice by e-mail notifying them of the need to complete an approved course, or to submit additional documentation in support of their request for an exemption.

Finally, IRRC identified some typographical errors in §§ 13.307(b)(4) (relating to noncompliance) and 13.308(c) and in the RAF, which have been corrected in this final-form rulemaking. IRRC also asked that the number of limited license funeral directors be included in responses to questions # 15, 16 and 19 in the RAF. As noted previously, there are approximately 119 limited license holders. This information has been updated in the RAF.

Description of Amendments to this Final-Form Rulemaking

Section 13.77 is amended to include the requirement that applicants for a limited license complete at least 3 hours of approved training in child abuse recognition and reporting and that applicants for biennial renewal of a limited license complete at least 2 hours of approved continuing education in child abuse recognition and reporting in accordance with § 13.308(a) and (b).

The definition of "perpetrator" in § 13.301 is amended to use the defined term "person responsible for the child's welfare."

Section 13.302 is amended and restructured to include the provisions of 23 Pa.C.S. § 6311(b)(2) and (3), which clarify that the duty to report includes the responsibility to report suspected child abuse even when the child has not come before the mandated reporter or when the identity of the person responsible for the child abuse is not known.

Section 13.303 is amended to include language from 23 Pa.C.S. § 6314 requiring mandated reporters to make medical summaries or reports of photographs, X-rays and relevant medical tests available to law enforcement officials in the course of investigating cases of alleged child abuse.

Section 13.306 is amended to include the requirements in 23 Pa.C.S. § 6311.1 which provides that privileged communications between a mandated reporter and a client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse.

A typographical error in § 13.307(b)(4) is corrected to include the complete citation to 23 Pa.C.S. § 6319, pertaining to penalties for failure to report suspected child abuse.

Substantial amendments are made to § 13.308. First, subsection (a) is amended to make it clear that individuals applying for a license shall have completed at least 3 hours of training which has been approved by both the Department of Human Services and the Bureau of Professional and Occupational Affairs, as set forth in § 13.309. The Board clarifies the process for an applicant to certify that the applicant has either completed the required training or has been granted an exemption under subsection (c) and that the Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption.

In subsection (c), a typographical error is corrected by deleting the word "holder." Also, paragraph (3) is amended to clarify the standards for evaluation of requests for exemptions by explaining that the Board may grant an exemption if it finds that the completion of the

training or continuing education is duplicative or unnecessary under the circumstances. The Board adds subsection (d) to clarify that exemptions granted under subsection (c) are only applicable for the biennial renewal period for which the exemption is requested and to explain the process for notifying applicants/licensees of the grant or denial of an exemption request.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Because licensees are already required to complete mandatory continuing education, and these 2 hours in child abuse recognition and reporting are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure would incur an additional requirement, and as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved training providers of the mandatory training in child abuse recognition and reporting are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandated reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 26, 2021, the Board submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 1320, to IRRC and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), the House Professional Licensure Committee (HPLC) and the Legislative Reference Bureau.

Under section 5(c) of the Regulatory Review Act, IRRC, the SCP/PLC and the HPLC were provided with copies of the comments received on the regulation, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments received from IRRC. No public comments were received. The Board also received no comments from the SCP/PLC or the HPLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on November 30, 2021, the Board delivered this final-form rulemaking to IRRC, the SCP/PLC and the HPLC. Under section 5.1(j.2) of the Regulation Review Act, the final-form rulemaking was deemed approved by the SCP/PLC and the HPLC on January 25, 2022. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 26, 2022, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Kristel Hennessy Hemler, Board Administrator, State Board of Funeral Directors, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-FUNERAL@PA.GOV.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968

(P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, but no comments were received.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 51 Pa.B. 1320.

(4) This final-form rulemaking is necessary and appropriate for the administration of the 23 Pa.C.S. §§ 6301—6388.

Order

The Board, therefore, orders that:

(a) The regulations of the Board at 49 Pa. Code Chapter 13 are amended by amending §§ 13.11, 13.77, 13.231, 13.301—13.307 and 13.401 and adding §§ 13.308 and 13.309 to read as set forth in Annex A.

(Editor's Note: The amendment to § 13.77 was not included in the proposed rulemaking.)

(b) The Board shall submit this final-form rulemaking to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

WILLIAM G. HARRIS,
Chairperson

(Editor's Note: See 52 Pa.B. 1029 (February 12, 2022), for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-4824 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS

LICENSURE

§ 13.11. General requirements.

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(c) In addition to the educational and training requirements, an applicant for licensure in this Commonwealth shall pass a combined oral, practical and written examination. A limited exception will be the granting of a restricted license to estates, widow's or widower's of deceased funeral directors.

(d) An applicant for licensure as a funeral director in this Commonwealth shall complete at least 3 hours of training in child abuse recognition and reporting in accordance with § 13.308(a) (relating to child abuse recognition and reporting—mandatory training requirement) as a condition of licensure.

LICENSURE OF A FUNERAL DIRECTOR FROM ANOTHER STATE

§ 13.77. Limited license.

(a) A person licensed by a reciprocal state to practice the profession of funeral director who seeks a limited license shall apply to the Board on a form provided by the Board, including:

(i) An original certification from the reciprocal state that the applicant is licensed as a funeral director in that jurisdiction and is in good standing.

(ii) The fee prescribed by § 13.12 (relating to fees).

(iii) Certification of completion of at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 13.308(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(b) A limited license shall be subject to biennial renewal. The limited license holder shall complete, as a condition of renewal, at least 2 hours of approved continuing education in child abuse recognition and reporting in accordance with § 13.308(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(c) A limited license shall become inactive upon the revocation, suspension, placement upon inactive status, or other lapse of the holder's license in the reciprocal state. Unless a limited license is otherwise suspended or revoked, the Board may reinstate the limited license to active status upon proof that the holder's license in the reciprocal state is no longer revoked, suspended, placed on inactive status or otherwise lapsed.

(d) The Board may take disciplinary action against the holder of a limited license for any unprofessional conduct that occurs within this Commonwealth. The Board will report to the reciprocal state any disciplinary action taken against the holder of a limited license.

LICENSE RENEWAL

§ 13.231. Biennial registration; unregistered status and inactive status; failure to renew.

(a) A licensee shall register each biennial period to retain the right to practice. Initial registration shall automatically occur when a license is issued. Registration for a biennial period expires on the first day of February of every even numbered year. Unless excused by the Board for good cause under section 10(b)(4) of the act (63 P.S. § 479.10(b)(4)), the Board will not grant an application for renewal of a funeral director license unless the licensee has certified that the licensee has completed the amount of continuing education required by § 13.401 (relating to credit hour requirements), including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 13.308(b) (relating to child abuse recognition and reporting—mandatory training requirement).

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CHILD ABUSE REPORTING REQUIREMENTS

§ 13.301. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 13.302—13.309 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Bodily injury—Impairment of physical condition or substantial pain.

Child—An individual under 18 years of age.

Child abuse—Intentionally, knowingly or recklessly doing any of the following:

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed;

(II) has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors;

(III) has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions); or

(IV) has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services, which operates a 24-hour a day Statewide toll-free telephone system for receiving reports

of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes licensed funeral directors.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—An individual who has committed child abuse as defined in this section. The following apply:

- (i) This term includes only the following:
 - (A) A parent of the child.
 - (B) A spouse or former spouse of the child's parent.
 - (C) A paramour or former paramour of the child's parent.
 - (D) An individual 14 years of age or older who is a person responsible for the child's welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.
 - (E) An individual 14 years of age or older who resides in the same home as the child.
 - (F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption of the child.
 - (G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

- (A) A parent of the child.
- (B) A spouse or former spouse of the child's parent.
- (C) A paramour or former paramour of the child's parent.
- (D) A person responsible for the child's welfare who is 18 years of age or older.
- (E) An individual 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

- (i) A youth camp or program.
- (ii) A recreational camp or program.
- (iii) A sports or athletic program.
- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 13.302. Suspected child abuse—mandated reporting requirements.

(a) *General rule.*

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), funeral directors are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this subsection shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Whenever a mandated reporter is required to make a report under subsection (a) in the capacity as a member of the staff of a medical, dental or other public or private institution, school, facility or agency, that licensee shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.* A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a

written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this paragraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* A written or electronic report of suspected child abuse, shall include the following information, if known:

(1) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(2) Where the suspected child abuse occurred.

(3) The age and sex of each subject of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or any sibling of the child.

(5) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(6) Family composition.

(7) The source of the report.

(8) The name, telephone number and e-mail address of the person making the report.

(9) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(10) Other information required by Federal law or regulation.

(11) Other information which the Department of Human Services may require by regulation.

§ 13.303. Photographs, medical tests and X-rays of child subject to report.

A funeral director may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 13.302(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request. Medical summaries or reports of the photographs, X-rays and relevant medical tests shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6490(a)(9) or (10) (relating to release of information in confidential reports).

§ 13.304. Suspected death as a result of child abuse—mandated reporting requirement.

A funeral director who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 13.305. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a funeral director who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the funeral director's actions. For the purpose of any civil or criminal proceeding, the good faith of the funeral director shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a funeral director's actions under §§ 13.302—13.304 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 13.306. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 13.302—13.304 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions in § 13.201 (relating to professional responsibilities) and any other client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse.

§ 13.307. Noncompliance.

(a) *Disciplinary action.* A funeral director who willfully fails to comply with the reporting requirements in §§ 13.302—13.304 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 479.11).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties), a funeral director who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 13.308. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for a license shall have completed at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 13.309 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensees seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting. This 2 hours of continuing education in child abuse recognition and reporting will be accepted as a portion of the continuing education required under § 13.401 (relating to credit hour requirements) regardless of whether it otherwise meets the requirements of §§ 13.402—13.405. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 13.309 (relating to child abuse recognition and reporting course approval process). The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course or the licensee has obtained an exemption under subsection (c).

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required under section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required under 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant or licensee should not be subject to the training or continuing education requirement. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license, as applicable. If an exemption is denied, the Board will email the applicant or licensee a discrepancy notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption.

§ 13.309. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services (DHS), Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions shall include the following:

(1) Contact information (mailing address, email address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) The course related materials including, as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript or recording of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which shall include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the approved provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

CONTINUING EDUCATION

§ 13.401. Credit hour requirements.

(a) During each biennial renewal period, a licensed funeral director shall complete 6 hours of continuing education, including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 13.308(b) (relating to child abuse recognition and reporting—mandatory training requirement). Except for the mandatory training in child abuse recognition and reporting, this provision does not require a funeral director to complete continuing education during the renewal period in which the funeral director is first issued a license.

(b) Except as permitted in § 13.231(d) (relating to biennial registration; unregistered status and inactive status; failure to renew) or as directed by the Board, continuing education may satisfy the requirement of subsection (a) only for the biennium during which it was completed. No hour of continuing education may be used to satisfy the requirement of subsection (a) for more than 1 biennium.

[Pa.B. Doc. No. 22-421. Filed for public inspection March 18, 2022, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

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

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

Child Abuse Reporting Requirements

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) amends §§ 47.12, 47.32, 47.51—47.57, 48.12, 48.32, 48.51—48.57, 49.12, 49.32, and 49.51—49.57 and adds §§ 47.58, 47.59, 48.58, 48.59, 49.58 and 49.59 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P.S. § 1906(2)) sets forth the Board's general rulemaking authority. Under sections 6301—6388 of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees of the Board.

Background and Purpose

Since 2014, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on all health-related Boards to require training in child abuse recognition and reporting for licensees who are considered "mandated reporters" under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license or applying for renewal of a license on or after January 1, 2015. The Board implemented the training requirements as mandated at the beginning of 2015 and subsequently proposed this final-form rulemaking to update the Board's existing regulations on the subject of child abuse reporting to be consistent with the CPSL, as amended.

The proposed rulemaking was published at 51 Pa.B. 14 (January 2, 2021) for 30 days of public comment, but no public comments were received. The Independent Regulatory Review Commission (IRRC) submitted comments on March 3, 2021. The House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. The following represents a summary of

IRRC's comments and the Board's response, and a description of the amendments made to this final-form rulemaking.

Summary of IRRC's Comments and the Board's Response

Initially, IRRC commented that subsection (a) of §§ 47.58, 48.58 and 49.58 (relating to child abuse recognition and reporting—mandatory training requirement) requires an individual applying for licensure to complete at least 3 hours of training in child abuse recognition and reporting, but does not address documentation and reporting of completion of that training. IRRC asked the Board to revise this subsection to include implementation procedures for submitting proof of training. In response, the Board revises subsection (a) to clarify that the 3 hours of training must be approved by the Department of Human Services and the Bureau of Professional and Occupational Affairs (Bureau), as set forth in §§ 47.59, 48.59 and 49.59 (relating to child abuse recognition and reporting course approval process) to assure that the course provider can electronically report the completion of the training to the Bureau. The completion of the training is then automatically recorded on the applicant's profile in the Pennsylvania Licensing System (PALS). An applicant would need to certify on the application that the applicant has either completed the training or has been granted an exemption by the Board. The Board amends this subsection to clarify that the Board will not issue a license unless the PALS system includes the report from an approved course provider or the Board has granted an exemption.

IRRC also commented that the standards for documentation and evaluation of exemption requests under subsection (c)(3) is vague. This provision implements section 6383(b)(6) of the CPSL (23 Pa.C.S. § 6383(b)(6)) which provides that a licensing board may exempt an applicant or licensee if that individual submits documentation acceptable to the licensing board that demonstrates that the individual should not be subject to the training or continuing education requirement. IRRC asks the Board to explain the standards for sufficient documentation and the evaluation process for reviewing a request for an exemption. It is difficult to set standards for documentation that would apply to all situations. For example, the Board has granted exemptions to licensees who work for the Department of Human Services, Office of Children, Youth and Families, which is the office that is responsible for investigating reports of suspected child abuse. Acceptable documentation in this circumstance might be a letter from the individual's supervisor verifying employment and a job description that shows the licensee is responsible for investigating reports of suspected child abuse. Or it may include documentation that the employee is an approved trainer in the area of child abuse recognition and reporting. Another example might be a licensee who volunteers as a Court-appointed Special Advocate (CASA) for children who are victims of abuse or neglect. These individuals are required to complete at least 30 hours of pre-service training and 12 hours of annual in-service training. See 37 Pa. Code § 200.221 (relating to training). Generally, the Board evaluates these requests to determine whether 3 hours of training in the area of child abuse recognition and reporting would be duplicative of other training the individual has completed or is unnecessary under the circumstances. In addition, the Board would not find it sufficient for an applicant or licensee to simply state that they do not include children in their practice due to the expanded scope of the duty to report set forth in section 6311(b) of the CPSL, which no longer

requires the mandated reporter to come into contact with the child in the course of their employment, occupation or practice of a profession.

In response to IRRC’s comment, the Board amends subsection (c)(3) to clarify these standards. The Board adds new subsection (d) to clarify that exemptions granted under subsection (c) are only applicable for the biennial renewal period for which the exemption is requested. The Board explains the process for notifying applicants/licensees of the grant or denial of an exemption request in subsection (d). If an exemption is granted, the license will be issued or renewed. If an exemption is denied, the applicant or licensee will receive a discrepancy notice by e-mail notifying them of the need to complete an approved course, or to submit additional documentation in support of their request for an exemption.

IRRC also pointed out that, unlike §§ 47.58(b) and 49.58(b), the comparable provision in § 48.58(b) did not include the explanatory language clarifying that the 2 hours of continuing education in child abuse recognition and reporting “are a portion of the total continuing education required for biennial renewal.” In response, the Board adds this language to § 48.58(b).

Next, IRRC pointed out that the definition of “mandated reporter” in § 49.51 (relating to definitions relating to child abuse reporting requirements) cross references § 49.52 (relating to suspected child abuse—mandated reporting requirements.) However, the definition of “mandated reporter” in §§ 47.51 and 48.51 cross references 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse). For clarity and consistency, IRRC asked the Board to revise the definition in § 49.51 to cross-reference the statute. The Board makes the requested revision to the definition in § 49.51 to cross reference the statute in this final-form rulemaking.

Finally, IRRC noted that under 23 Pa.C.S. § 6311(a)(12), an individual supervised or managed by a Board licensee who has direct contact with children in the course of employment is also a mandated reporter. For that reason, the Board included a reminder to its licensees in the preamble to the proposed rulemaking that individuals they supervise or manage should be aware of the reporting requirements. IRRC asked the Board to explain if it will use additional methods to communicate this message to its licensees. IRRC also asked the Board to consider whether it would be appropriate to require its licensees to advise employees of their mandated reporter status.

The Board considered this comment, and although the Board does not find it necessary to impose such a duty on its licensees, the Board has other means at its disposal, such as the Board’s web site and newsletters, to assure that licensees are aware that individuals that they supervise or manage who come into contact with children in the course of their employment are also mandated reporters and should be aware of the reporting requirements under the CPSL.

Description of the Amendments to this Final-Form Rulemaking

In addition to revisions that were made in response to IRRC’s comments, the Board took this opportunity to make additional clarity edits and to correct typographical errors. The following is a description of all amendments made to this final-form rulemaking.

§§ 47.51, 48.51 and 49.51—Definitions relating to child abuse reporting requirements

The Board amends the definition of “perpetrator” to use the defined term “person responsible for the child’s welfare” at subparagraphs (i)(D) and (ii)(D) to aid clarity. In addition, the Board corrects typographical errors in the definition of “perpetrator” in §§ 47.51 and 49.51 at subparagraph (i)(F) to refer to “birth or adoption to the child,” and in § 49.51 at subparagraph (ii)(B) to correct the spelling of the word “spouse.” The Board corrects a typographical error in the definition of “sexual abuse or exploitation” in § 48.51 at subparagraph (i)(D) to refer to “actual or simulated sexual activity.” Finally, the Board amends the cross-reference in the definition of “mandated reporter” in § 49.51 to cross reference 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to be consistent with §§ 47.51 and 48.51.

§§ 47.52, 48.52 and 49.52—Suspected child abuse—mandated reporting requirements

To aid clarity and to be consistent with the CPSL, the Board adds two additional paragraphs to subsection (a) to include language contained in 23 Pa.C.S. § 6311(b)(2) and (3), which clarify that nothing in this subsection shall require a child to come before the mandated reporter to make a report of suspected child abuse; and that nothing in this subsection shall require the mandated reporter to identify the person responsible for the suspected child abuse to make a report.

§§ 47.53, 48.53 and 49.53—Photographs of child subject to report

To aid clarity and to be consistent with the CPSL, the Board amends these sections to include language in section 6314 of the CPSL (23 Pa.C.S. § 6314) that requires that summaries or reports of the photographs shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6490(a)(9) or (10) (relating to release of information in confidential reports).

§§ 47.58, 48.58 and 49.58—Child abuse recognition and reporting—mandatory training requirement

In response to IRRC’s comment, the Board amends subsection (a) to clarify the process for applicants and approved course providers to document completion of the required 3 hours of training as condition of licensure and to notify licensees that the Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting completion of the training by the applicant or the applicant has obtained an exemption under subsection (c).

The Board amends subsection (b) to clarify that the continuing education in child abuse recognition and reporting must be completed within the applicable biennial renewal period to be credited for licensure renewal. The Board also took this opportunity to clarify that if a licensee holds more than one license issued by the Board, or holds a license issued by another licensing board within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses. In addition, in response to IRRC’s comment, the Board amends § 48.58(b) to be consistent with §§ 47.58(b) and 49.58(b), by clarifying that the 2 hours of continuing education in child abuse recognition and reporting “are a portion of the total continuing education required for biennial renewal.”

With regard to subsection (c), pertaining to exemptions, the Board clarifies that for purposes of licensure renewal,

comparable training completed under paragraph (1) or (2) must have been completed during the relevant biennial renewal period. The Board amends paragraph (3) in response to IRRC's comment to set forth the standards for documentation and evaluation of exemption requests where the individual demonstrates that the training or continuing education requirement is duplicative or unnecessary under the circumstances. The Board also clarifies that it is not enough that the applicant or licensee states that they do not include children in their practice.

Finally, the Board adds new subsection (d) to clarify that exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. This subsection also clarifies the process for the grant or denial of an exemption.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Because licensees are already required to complete mandatory continuing education, and these 2 hours in child abuse recognition and reporting are incorporated in the existing requirement, there would not be an increased burden. Only applicants for licensure would incur an additional requirement and, as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved Act 31 training providers are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on the regulated community. In addition, the implementation of an electronic reporting system for mandated reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Regulatory Review

Under section 5(a) and (f) of the Regulatory Review Act (71 P.S. § 745.5(a) and (f)), on November 24, 2020, the Board submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 14, to IRRC and the Legislative Reference Bureau. The Board subsequently submitted the notice of proposed rulemaking to the Chairpersons of the HPLC and the SCP/PLC for review and comment on February 19, 2021, as required under section 5(f) of the Regulatory Review Act.

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

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on November 30, 2021, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC on January 25, 2022. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 26, 2022, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Sarah McNeill, Board Administrator, State Board of

Social Workers, Marriage and Family Therapists and Professional Counselors, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-SOCIALWORK@pa.gov.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, but no comments were received.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 51 Pa.B. 14.

(4) This final-form rulemaking is necessary and appropriate for the administration 23 Pa.C.S. §§ 6301—6388.

Order

The Board, therefore, orders that:

(a) The regulations of the Board at 49 Pa. Code Chapters 47, 48 and 49 are amended by amending §§ 47.12, 47.32, 47.51—47.57, 48.12, 48.32, 48.51—48.57, 49.12, 49.32, and 49.51—49.57 and adding §§ 47.58, 47.59, 48.58, 48.59, 49.58 and 49.59 to read as set forth in Annex A.

(b) The Board shall submit the final-form regulation to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit the final-form regulation to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify the final-form regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form regulation shall take effect upon publication in the *Pennsylvania Bulletin*.

JOY E. CORBY, PHD, LMFT,
Chairperson

(Editor's Note: See 52 Pa.B. 1079 (February 12, 2022 for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-6919 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

LICENSURE

§ 47.12. Qualifications for licensure.

General qualifications and requirements for applicants for licensure are as follows:

* * * * *

(5) The applicant has submitted two Certificates of Recommendation on forms furnished by the Board.

(6) The applicant has completed at least 3 hours of training in child abuse recognition and reporting in accordance with § 47.58(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(7) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.

CONTINUING EDUCATION

§ 47.32. Requirement for biennial renewal.

The Board requires, as a condition of biennial renewal of a bachelor social worker’s license, a social worker’s license or a clinical social worker’s license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs in social work offered by approved providers. Excess clock hours may not be carried over to the next biennium. At least 3 of the required 30 clock hours must be related to ethical issues and at least 2 clock hours must be in child abuse recognition and reporting in accordance with § 47.58(b) (relating to child abuse recognition and reporting—mandatory training requirement).

CHILD ABUSE REPORTING REQUIREMENTS

§ 47.51. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 47.52—47.59 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—

Intentionally, knowingly or recklessly doing any of the following:

- (i) Causing bodily injury to a child through any recent act or failure to act.
- (ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (iv) Causing sexual abuse or exploitation of a child through any act or failure to act.
- (v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (vii) Causing serious physical neglect of a child.
- (viii) Engaging in any of the following recent acts:
 - (A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
 - (B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.
 - (C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child’s parent, who the actor knows or reasonably should have known:

(I) is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed;

(II) has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors;

(III) has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions); or

(IV) has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services, which operates a 24-hour a day Statewide toll-free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all licensed bachelor social workers, licensed social workers and licensed clinical social workers.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—An individual who has committed child abuse as defined in this section. The following apply:

- (i) This term includes only the following:
 - (A) A parent of the child.
 - (B) A spouse or former spouse of the child’s parent.
 - (C) A paramour or former paramour of the child’s parent.
 - (D) An individual 14 years of age or older who is a person responsible for the child’s welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.
 - (E) An individual 14 years of age or older who resides in the same home as the child.
 - (F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

- (A) A parent of the child.
- (B) A spouse or former spouse of the child's parent.
- (C) A paramour or former paramour of the child's parent.
- (D) A person responsible for the child's welfare who is 18 years of age or older.
- (E) An individual 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

- (i) A youth camp or program.
- (ii) A recreational camp or program.
- (iii) A sports or athletic program.
- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—Any of the following:

- (i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:
 - (A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

- (A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).
- (B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).
- (C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).
- (D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).
- (E) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).
- (F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).
- (G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).
- (H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).
- (I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).
- (J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).
- (K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).
- (L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).
- (M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 47.52. Suspected child abuse—mandated reporting requirements.

(a) *General rule.*

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed bachelor social workers, licensed social workers and licensed clinical social workers are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

- (i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this subsection shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Whenever a licensed bachelor social worker, licensed social worker or licensed clinical social worker (licensee) is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that licensee shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.*

(1) A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(i) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(ii) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(2) A written or electronic report of suspected child abuse must include the following information, if known:

(i) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(ii) Where the suspected child abuse occurred.

(iii) The age and sex of each subject of the report.

(iv) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(v) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(vi) Family composition.

(vii) The source of the report.

(viii) The name, telephone number and e-mail address of the person making the report.

(ix) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(x) Other information required by Federal law or regulation.

(xi) Other information that the Department of Human Services may require by regulation.

§ 47.53. Photographs of child subject to report.

A licensed bachelor social worker, licensed social worker or licensed clinical social worker may take or cause to be taken photographs of the child who is subject to a report. Summaries or reports of the photographs taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 47.52(c)(1)(ii) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and may obtain them or duplicates of them upon request. Summaries or reports of the photographs shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6490(a)(9) or (10) (relating to release of information in confidential reports).

§ 47.54. Suspected death as a result of child abuse—mandated reporting requirement.

A licensed bachelor social worker, licensed social worker or licensed clinical social worker who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 47.55. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a licensed bachelor social worker, licensed social worker or licensed clinical social worker who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the actions of the licensed bachelor social worker, licensed social worker or licensed clinical social worker. For the purpose of any civil or criminal proceeding, the good faith of the licensed bachelor social worker, licensed social worker or licensed clinical social worker shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensee's actions under §§ 47.52—47.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 47.56. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 47.52—47.54 (relating to suspected child

abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient/client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. Additionally, under 23 Pa.C.S. § 6313(e) (relating to reporting procedure), notwithstanding any other provision of law to the contrary, a mandated reporter who makes a report of suspected child abuse does not violate the Mental Health Procedures Act (50 P.S. §§ 7101—7503) by releasing information necessary to complete the report.

§ 47.57. Noncompliance.

(a) *Disciplinary action.* A licensed bachelor social worker, licensed social worker or licensed clinical social worker who willfully fails to comply with the reporting requirements in §§ 47.52—47.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties), a licensed bachelor social worker, licensed social worker or licensed clinical social worker who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

- (i) The mandated reporter willfully fails to report.
- (ii) The child abuse constitutes a felony of the first degree or higher.
- (iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 47.58. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for a license shall complete, as a

condition of licensure, at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 47.59 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensees seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 47.59. The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course within the applicable biennial renewal period or the licensee has obtained an exemption under subsection (c). If a licensee holds more than one license issued by the Board, or holds a license issued by another licensing board within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant or licensee should not be subject to the training or continuing education requirement. The Board will not grant an exemption based solely upon proof that children are not part of the applicant's or licensee's practice. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license, as applicable. If an exemption is denied, the Board will e-mail the applicant or licensee a discrepancy notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption.

§ 47.59. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120 or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649 or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) The course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which must include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

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

LICENSURE

§ 48.12. General qualifications for licensure.

General qualifications and requirements for applicants for licensure are as follows:

* * * * *

(5) The applicant has submitted two certificates of recommendation on forms furnished by the Board.

(6) The applicant has completed at least 3 hours of training in child abuse recognition and reporting in accordance with § 48.58(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(7) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.

CONTINUING EDUCATION

§ 48.32. Requirement for biennial renewal.

The Board requires, as a condition of biennial renewal of a marriage and family therapist's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs offered by approved providers. Up to 20 clock hours may be obtained by home study. Excess clock hours may not be carried over to the next biennium. At least 3 of the required 30 clock hours must be related to ethical issues and at least 2 of the required 30 clock hours must be completed in child abuse recognition and reporting in accordance with § 48.58(b) (relating to child abuse recognition and reporting—mandatory training requirement).

CHILD ABUSE REPORTING REQUIREMENTS

§ 48.51. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 48.52—48.59 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—

Intentionally, knowingly or recklessly doing any of the following:

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services, which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all licensed marriage and family therapists.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—An individual who has committed child abuse as defined in this section. The following apply:

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) An individual 14 years of age or older who is a person responsible for the child's welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person responsible for the child's welfare who is 18 years of age or older.

(E) An individual 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—

A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or public or private organization:

(i) A youth camp or program.

(ii) A recreational camp or program.

(iii) A sports or athletic program.

- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

- (A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.
- (B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.
- (C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.
- (D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

- (A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).
- (B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).
- (C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).
- (D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).
- (E) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).
- (F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 48.52. Suspected child abuse—mandated reporting requirements.

(a) *General rule.*

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed marriage and family therapists are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

- (i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.
- (ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.
- (iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this subsection shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Whenever a licensed marriage and family therapist is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that licensed marriage and family therapist shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.*

(1) A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(i) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(ii) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(2) A written or electronic report of suspected child abuse must include the following information, if known:

(i) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(ii) Where the suspected child abuse occurred.

(iii) The age and sex of each subject of the report.

(iv) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(v) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(vi) Family composition.

(vii) The source of the report.

(viii) The name, telephone number and e-mail address of the person making the report.

(ix) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(x) Other information required by Federal law or regulation.

(xi) Other information that the Department of Human Services may require by regulation.

§ 48.53. Photographs of child subject to report.

A licensed marriage and family therapist may take or cause to be taken photographs of the child who is subject to a report. Summaries or reports of the photographs taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 48.52(c)(1)(ii) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and may obtain them or duplicates of them upon request. Summaries or reports of the photographs shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6490(a)(9) or (10) (relating to release of information in confidential reports).

§ 48.54. Suspected death as a result of child abuse—mandated reporting requirement.

A licensed marriage and family therapist who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 48.55. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a licensed marriage and family therapist who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the licensed marriage and family therapist's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensed marriage and family therapist shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensed marriage and family therapist's actions under §§ 48.52—48.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 48.56. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 48.52—48.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient/client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. Additionally, under 23 Pa.C.S. § 6313(e) (relating to reporting procedure), notwithstanding any other provision of law to the contrary, a mandated reporter who makes a report of suspected child abuse does not violate the Mental Health Procedures Act (50 P.S. §§ 7101—7503) by releasing information necessary to complete the report.

§ 48.57. Noncompliance.

(a) *Disciplinary action.* A licensed marriage and family therapist who willfully fails to comply with the reporting requirements in §§ 48.52—48.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties), a licensed marriage and family therapist who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 48.58. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for a license as a marriage and family therapist shall complete, as a condition of licensure, at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 48.59 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensed marriage and family therapists seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 48.59 (relating to child abuse recognition and reporting course approval process). The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course within the applicable biennial renewal period or the licensee has obtained an exemption under subsection (c). If a licensee holds more than one license issued by the Board, or holds a license issued by another licensing Board within the

Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant or licensee should not be subject to the training or continuing education requirement. The Board will not grant an exemption based solely upon proof that children are not part of the applicant's or licensee's practice. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license, as applicable. If an exemption is denied, the Board will e-mail the applicant or licensee a discrepancy notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption.

§ 48.59. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120 or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649 or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) The course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which must include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of authorized representative of the providers. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

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

§ 49.12. General qualifications for licensure.

General qualifications and requirements for applicants for licensure are as follows:

* * * * *

(5) The applicant has submitted two certificates of recommendation on forms furnished by the Board.

(6) The applicant has completed at least 3 hours of training in child abuse recognition and reporting in accordance with § 49.58(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(7) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.

CONTINUING EDUCATION

§ 49.32. Requirement for biennial renewal.

The Board requires, as a condition of biennial renewal of a professional counselor's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs offered by approved providers. Up to 20 clock hours may be obtained by home study. Excess clock hours may not be carried over to the next biennium. At least 3 of the required 30 clock hours must be related to ethical issues and at least 2 of the required 30 clock hours must be completed in child abuse recognition and reporting in accordance with § 49.58(b) (relating to child abuse recognition and reporting—mandatory training requirement).

CHILD ABUSE REPORTING REQUIREMENTS

§ 49.51. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 49.52—49.59 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—

Intentionally, knowingly or recklessly doing any of the following:

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services, which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all licensed professional counselors.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—An individual who has committed child abuse as defined in this section. The following apply:

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) An individual 14 years of age or older who is a person responsible for the child's welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person responsible for the child's welfare who is 18 years of age or older.

(E) An individual 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—

A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or by a public or private organization:

(i) A youth camp or program.

(ii) A recreational camp or program.

(iii) A sports or athletic program.

(iv) A community or social outreach program.

(v) An enrichment or educational program.

(vi) A troop, club or similar organization.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.

(ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 49.52. Suspected child abuse—mandated reporting requirements.

(a) *General rule.*

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed professional counselors are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this subsection shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Whenever a licensed professional counselor is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that licensed professional counselor shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.*

(1) A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(i) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(ii) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(2) A written or electronic report of suspected child abuse must include the following information, if known:

(i) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(ii) Where the suspected child abuse occurred.

(iii) The age and sex of each subject of the report.

(iv) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(v) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(vi) Family composition.

(vii) The source of the report.

(viii) The name, telephone number and e-mail address of the person making the report.

(ix) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(x) Other information required by Federal law or regulation.

(xi) Other information that the Department of Human Services may require by regulation.

§ 49.53. Photographs of child subject to report.

A licensed professional counselor may take or cause to be taken photographs of the child who is subject to a report. Summaries or reports of the photographs taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 49.52(c)(1)(ii) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and may obtain them or duplicates of them upon request. Summaries or reports of the photographs shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6490(a)(9) or (10) (relating to release of information in confidential reports).

§ 49.54. Suspected death as a result of child abuse—mandated reporting requirement.

A licensed professional counselor who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 49.55. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a licensed professional counselor who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the licensed professional counselor's actions. For the purpose of any civil or criminal proceed-

ing, the good faith of the licensed professional counselor shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensed professional counselor's actions under §§ 49.52—49.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 49.56. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 49.52—49.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient/client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. Additionally, under 23 Pa.C.S. § 6313(e) (relating to reporting procedure), notwithstanding any other provision of law to the contrary, a mandated reporter who makes a report of suspected child abuse does not violate the Mental Health Procedures Act (50 P.S. §§ 7101—7503) by releasing information necessary to complete the report.

§ 49.57. Noncompliance.

(a) *Disciplinary action.* A licensed professional counselor who willfully fails to comply with the reporting requirements in §§ 49.52—49.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties), a licensed professional counselor who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 49.58. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for a license as a professional counselor shall complete, as a condition of licensure, at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 49.59 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensed professional counselors seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 49.59 (relating to child abuse recognition and reporting course approval process). The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course within the applicable biennial renewal period or the licensee has obtained an exemption under subsection (c). If a licensee holds more than one license issued by the Board, or holds a license issued by another licensing Board within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant or licensee should not be subject to the training or continuing education requirement. The Board will not grant an exemption based solely upon proof that children are not part of the applicant's or licensee's practice. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license, as applicable. If an exemption is denied, the Board will e-mail the applicant or licensee a discrepancy notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption.

§ 49.59. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120 or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649 or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) The course related materials, including as applicable:

- (i) Handouts.
- (ii) Narrated script or talking points.
- (iii) Interactive activities or exercises.
- (iv) Videos and audio/visual content.
- (v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.
- (vi) For online courses, a transcript of audio training.
- (8) Citation of sources, including written permission to use copyrighted material, if applicable.
- (9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.
- (10) Printed materials used to market the training.
- (11) Evaluation used to assess participants' satisfaction with the training.
- (12) Sample certificate of attendance/participation, which must include:
 - (i) Name of participant.

- (ii) Title of training.
- (iii) Date of training.
- (iv) Length of training (2 or 3 hours).
- (v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.
- (vi) Statement affirming the participant attended the entire course.
- (13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.
- (c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

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