

RULES AND REGULATIONS

Title 22—EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CHS. 741 AND 741a]

Postsecondary Distance Education Reciprocity

The Department of Education (Department) amends Part XXIII (relating to reciprocity for distance education) by rescinding Chapter 741 (relating to State authorization reciprocity) and adding Chapter 741a (relating to State authorization reciprocity) 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

This final-form rulemaking is authorized under section 124(b) of the Public School Code of 1949 (24 P.S. § 1-124(b)).

Background and Purpose

The act of June 1, 2016 (P.L. 252, No. 35) (Act 35) amended the Public School Code of 1949 by adding section 124(a), which requires the Secretary of Education “to enter into and administer membership in a regional compact and an interstate reciprocity agreement for the provision of postsecondary distance education.” Pursuant to this directive, the Department has affiliated with the Southern Regional Education Board, one of four regional compacts, for the sole purpose of participating in the State Authorization Reciprocity Agreement (SARA), the interstate reciprocity agreement adopted by the regional compacts to establish National standards for interstate delivery of postsecondary distance education.

Prior to Act 35, institutions of higher education in this Commonwealth seeking to offer distance education to students residing in other states needed to apply for authorization in those states and pay registration fees to each state. To address this issue, the four interstate education compacts worked together to organize SARA as a way to provide for reciprocity among member states and their participating institutions. Section 124(a) of the Public School Code of 1949 provides for Commonwealth affiliation with one of the regional compacts and membership in SARA and establishes the Department as the agency responsible for implementation and administration.

The Department is authorized under 124(b) of the Public School Code of 1949 to “charge administrative fees to institutions of higher education that choose to participate in the agreement, not to exceed the amount necessary to pay the administrative costs of the agreement.” Under the authority in section 124(b) of the Public School Code of 1949, the Department promulgated a final-omitted regulation that set the fees for institutions of higher education seeking to join SARA, which were set in accordance with the Department’s projected cost of implementing and administering participation in SARA. Section 124(b) of the Public School Code of 1949 directs that these “final-omitted regulations shall expire June 30, 2018” and “any revisions to the administrative fees charged under this subsection shall be made through regulations promulgated under the Regulatory Review Act.” Accordingly, the amended regulation rescinds cur-

rent Chapter 741, which expired on June 30, 2018, and adds Chapter 741a to set the fees for institutions of higher education seeking to join SARA. Additionally, the amended regulation repromulgates the sections of Chapter 741 concerning definitions, SARA membership, fees nonrefundable and annual renewals, while reducing the administrative fees currently in Chapter 741.

Comment and Response to Proposed Rulemaking

The Department published a notice of proposed rulemaking at 51 Pa.B. 1516 (March 20, 2021), with a public comment period as required by law. The Department received two comments from the public. The Department did not receive comments from the Independent Regulatory Review Commission (IRRC), the House Education Committee or the Senate Education Committee.

Billing

Comment:

One commentator commented on the effective date of the regulation and how this date related to billing.

Response:

The amended regulations will become effective on January 1, 2023. Any institutions who apply for new institutional participation after January 1, 2023, or renew their participation after January 1, 2023, will be billed according to the new fee schedule.

Reduced Fee Schedule

Comment:

One commentator requested clarification of the reduction of membership costs, the fee schedule effective date, whether a SARA fee is required for membership prior to January 1, 2023, and whether costs for participation have been reduced from \$60,000 to \$7,000.

Response:

Due to the unexpected institutional participation in SARA by Commonwealth institutions during its initial membership stage, the Department is now able to reduce membership fees. The new fee schedule will become effective January 1, 2023, and will be based on distance education revenue from the 2022 calendar year. Institutions will not be charged fees by the Commonwealth until January 1, 2023. Most of the institutions will benefit from the new fee schedule as the maximum fee charged by the Commonwealth has been reduced from \$60,000 to \$7,000.

Explanation of Regulation

There have been no amendments to the proposed rulemaking. This final-form rulemaking rescinds the current Chapter 741 in its entirety as it expired on June 30, 2018 under Act 35. See 24 P.S. § 1-124(b). Additionally, the amended regulation repromulgates the sections of Chapter 741 concerning definitions (22 Pa. Code § 741.1), SARA membership (22 Pa. Code §§ 741.11—741.13), fees nonrefundable (22 Pa. Code § 741.22), and Institutional renewal to participate in SARA (22 Pa. Code § 741.23), while reducing the administrative fees currently in Chapter 741 for institutions of higher education in this Commonwealth seeking to join SARA (22 Pa. Code § 741.21) as Chapter 741a.

Persons or Entities Affected

This final-form rulemaking affects the Department, as well as Commonwealth institutions of higher education which provide or seek to provide distance education to students in other states.

Fiscal Impact

Implementation requires the Department to pay an annual fee of \$50,000 to affiliate with the Southern Regional Education Board compact. In addition, the Department estimates a need for \$236,547 in staffing and administrative costs for implementation of the program with those Commonwealth institutions of higher education that are interested in joining SARA. The administrative responsibilities for SARA may not be covered by general fund revenues. In accordance with section 124 of the Public School Code of 1949, the amended regulation re-establishes fees that pay the administrative costs of the program, without the need for funding from the Department's general funds.

This final-form rulemaking will equate to a fiscal savings to 73 of the 108 Commonwealth institutions of higher education that already chose to participate in SARA and provide for lower initial fees for any institution that chooses to join in the future. The amended fees represent a small fraction of the costs that Commonwealth institutions would otherwise bear to obtain State authorization to offer distance education in other states if the Commonwealth did not join SARA.

Local governments do not have any involvement with the SARA program; as such, no fiscal impact is anticipated.

Paperwork Requirements

This final-form rulemaking will maintain current paperwork responsibilities on the Department and the regulated community because application materials have been developed by the Department and those materials must be completed and filed annually by interested institutions of higher education. The paperwork requirements imposed by current Chapter 741 will remain the same in amended Chapter 741a.

Sunset Date

There is no sunset date. The effectiveness of this final-form rulemaking will be reviewed and evaluated on an ongoing basis.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 9, 2021, the Department submitted a copy of the proposed rulemaking, published at 51 Pa.B. 1516 (March 20, 2021), to IRRC and to the majority and minority chairpersons of the House and Senate Education Committees for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department is required to submit to IRRC and the House and Senate Education Committees with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department considered comments received from the public.

On September 22, 2021, the Department delivered this final-form rulemaking to IRRC, to the majority and minority chairpersons of the House and Senate Education Committees. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the House and Senate Education Committees on November 17, 2021. Under 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on November 17, 2021, and announced, that because no comments were received on the proposed rulemaking and the Department did not amend the

rulemaking, IRRC was deemed to have approved the final-form rulemaking under section 5(g) of the Regulatory Review Act.

Contact Persons

For further information, contact Lynette Kuhn, Division Chief, 333 Market Street, 12th Floor, Harrisburg, PA 17126, lykuhn@pa.gov.

Findings

The Department 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 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.

(3) This final-form rulemaking does not include any amendments that would enlarge the scope of proposed rulemaking published at 51 Pa.B. 1516.

(4) This final-form rulemaking adopted by this order is necessary and appropriate for the administration of State Authorization Reciprocity.

Order

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

(a) The regulations of the Department in section 124(b) of the Public School Code of 1949 are amended to read as set forth in Annex A.

(b) The Department 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 Department shall submit this final-form rulemaking to IRRC, and the House and Senate Education Committees as required by law.

(d) The Department 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*, except for the fees that will become effective January 1, 2023.

NOE ORTEGA,
Secretary

(Editor's Note: See 51 Pa.B. 7590 (December 4, 2021) for IRRC's approval order.)

Fiscal Note: Fiscal Note 6-339 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART XXIII. RECIPROCITY FOR DISTANCE EDUCATION

CHAPTER 741. (Reserved)

- § 741.1. (Reserved).
- §§ 741.11—741.13. (Reserved).
- §§ 741.21—741.23. (Reserved).

CHAPTER 741a. STATE AUTHORIZATION RECIPROCITY

DEFINITIONS

Sec.
741a.1. Definitions.

SARA MEMBERSHIP

741a.11. State membership in a regional compact.
741a.12. State membership in SARA.
741a.13. Institutional participation in SARA.

FEES

741a.21. Fee for postsecondary institutions in this Commonwealth to participate in SARA.
741a.22. Fees nonrefundable.
741a.23. Institutional renewal to participate in SARA.
741a.24. Effective date.

DEFINITIONS

§ 741a.1. Definitions.

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

Calendar year—January 1—December 31.

Department—The Department of Education of this Commonwealth.

Distance education—

(i) Instruction offered by any means when the student and faculty member are in separate physical locations so that face-to-face communication is absent and communication is accomplished by one or more technological media. It includes real-time or delayed interaction using voice, video, data or text, or both, including instruction provided online, by correspondence, or by interactive video.

(ii) Instruction provided by means of synchronous video from an institution in this Commonwealth to additional campus sites of the same institution in this Commonwealth is not considered distance education.

(iii) Distance education is instructor-led and is not independent study.

Portal agency—The single entity designated to serve as the interstate point of contact for SARA questions, complaints and other communications.

Postsecondary institution—An institution legally authorized to award degrees at the associate level or above.

Regional compact—A nonprofit organization with member states dedicated to advancing education in a region. The four regional compacts are the Midwestern Higher Education Compact, the New England Board of Higher Education, the Southern Regional Education Board and the Western Interstate Commission for Higher Education.

SARA—State Authorization Reciprocity Agreement—A voluntary agreement adopted by the regional compacts to establish National standards for interstate delivery of postsecondary education through distance education.

Tuition—

(i) Moneys charged by the institution for instruction.

(ii) The term does not include moneys charged as fees, such as technology fees, student services fees or activities fees if those fees are noted on the invoice and in publications as fees that are separated from tuition.

SARA MEMBERSHIP

§ 741a.11. State membership in a regional compact.

The Department, consistent with section 124(b) of the Public School Code of 1949 (24 P.S. § 1-124(b)), has

affiliated with the Southern Regional Education Board for the sole purpose of being able to participate in SARA and facilitate interested postsecondary institutions in this Commonwealth offering distance education to students in other SARA member states.

§ 741a.12. State membership in SARA.

(a) The Department will be the SARA portal agency for the Commonwealth and will employ staff as necessary to provide the services required to implement SARA.

(b) The Department’s staffing and other costs related to SARA membership and responsibilities will be covered by fees paid by postsecondary institutions in accordance with §§ 741a.21 and 741a.22 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA; and fees nonrefundable).

§ 741a.13. Institutional participation in SARA.

(a) Postsecondary institutions will apply annually to the Department for authorization to participate in SARA in such manner and on such forms as prescribed by the Department. If the fee submitted with the application does not correspond to the distance education enrollment data in the Federal Integrated Postsecondary Education Data System database for the most recent reporting year, the institution will be required to provide evidence to support the calculation of the fee amount.

(b) The required fees as set forth in §§ 741a.21 and 741a.22 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA; and fees nonrefundable) must accompany the application. The Department will not process an application until the fees are received.

(c) The fees established by this chapter cover the administrative costs of the Department and do not cover other fees due to other organizations.

FEES

§ 741a.21. Fee for postsecondary institutions in this Commonwealth to participate in SARA.

Postsecondary institutions in this Commonwealth shall pay a fee to the Department based on tuition revenue from distance education in the most recently completed calendar year for the initial application fee and for each annual renewal to the Department to participate in SARA.

<i>Distance Tuition Revenue Fee</i>	
\$0—9,999	\$1,000
\$10,000—\$4,999,999	\$2,000
\$5,000,000—\$19,999,999	\$3,000
\$20,000,000—\$39,999,999	\$5,000
\$40,000,000 and over	\$7,000

§ 741a.22. Fees nonrefundable.

(a) The fee submitted with an application is not refundable if the registration or participation is denied or if the postsecondary institution withdraws its application.

(b) No portion of the fee will be refunded upon suspension or revocation of participation or optional termination of participation.

§ 741a.23. Institutional renewal to participate in SARA.

(a) Approval for participation in SARA is valid for 1 calendar year.

(b) An application for renewal of participation is required annually in accordance with § 741a.13 (relating to institutional participation in SARA).

§ 741a.24. Effective date.

(a) The fees established in § 741a.21 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA) will become effective on January 1, 2023.

[Pa.B. Doc. No. 22-77. Filed for public inspection January 14, 2022, 9:00 a.m.]

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 1141, 1151, 1161, 1171, 1181, 1191, 1211 AND 1230]

Medical Marijuana; General Provisions; Growers/Processors; Dispensaries; Laboratories; Physicians and Practitioners; Patients and Caregivers; Clinical Registrants and Academic Clinical Research Centers; and Practice and Procedure; Temporary Regulations

To implement the Medical Marijuana Program, the Department of Health (Department) periodically published temporary regulations regarding various sections of the Medical Marijuana Act (act) (35 P.S. §§ 10231.101—10231.2110). The act was amended on June 30, 2021, (P.L. 210, No. 44) to extend the expiration date of the Department’s authority to adopt temporary regulations until May 31, 2022. See section 1107(b) of the act. Pursuant to this authority, the Department is extending the deadline of the Department’s temporary medical marijuana regulations by republishing and readopting the temporary regulations to read as set forth in the following existing chapters:

- Chapter 1141 (relating to general provisions—temporary regulations). This chapter sets forth the general requirements for the Medical Marijuana Program.
- Chapter 1151 (relating to growers/processors—temporary regulations). This chapter sets forth the requirements for an entity to become permitted and operate as a grower/processor under the act.
- Chapter 1161 (relating to dispensaries—temporary regulations). This chapter sets forth the requirements for an entity to become permitted and operate as a dispensary under the act.
- Chapter 1171 (relating to laboratories—temporary regulations). This chapter sets forth the requirements for a laboratory to become approved by the Department to test medical marijuana under the act.
- Chapter 1181 (relating to physicians and practitioners—temporary regulations). This chapter sets forth the requirements for a physician to become a practitioner who may issue patient certifications under the act.
- Chapter 1191 (relating to patients and caregivers—temporary regulations). This chapter sets forth the requirements for a patient and caregiver to become registered with the Department to participate in the Medical Marijuana Program under the act.
- Chapter 1211 (relating to clinical registrants and academic clinical research centers—temporary regula-

tions). This chapter pertains to clinical registrants and academic clinical research centers in this Commonwealth who wish to participate in the Medical Marijuana Program.

- Chapter 1230 (relating to practice and procedure—temporary regulations). This chapter pertains to growers/processors, dispensaries, laboratories, disappointed medical marijuana organization permit applicants and any other person choosing to challenge an action taken by the Office of Medical Marijuana under the act.

Statutory Authority

The temporary regulations are published under the Medical Marijuana Act (act) (35 P.S. §§ 10231.101—10231.2110). Section 1107 of the act (35 P.S. § 10231.1107) specifically provides that the Department may promulgate temporary regulations that are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), referred to as the Commonwealth Documents Law, the Regulatory Review Act (71 P.S. §§ 745.1—745.14) and sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P.S. §§ 732-204(b) and 732-301(10)).

Proposed Regulations

The Department published proposed regulations at 51 Pa.B. 1141 (March 6, 2021). The Department intends to promulgate the final-form Medical Marijuana regulations by Spring 2022.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding these amended temporary regulations to John J. Collins, Office of Medical Marijuana, Department of Health, Room 628, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120, (717) 547-3047, RA-DHMedMarijuana@pa.gov.

Persons with a disability who wish to submit comments, suggestions or objections regarding these amended temporary regulations or who require an alternative format of these amended temporary regulations (for example, large print, audiotape, Braille) may do so by using the previous contact information, or for speech and/or hearing impaired persons, call the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Order

The Department, acting under section 1107 of the act (35 P.S. § 10231.1107), orders that:

(1) The following temporary regulations of the Department are incorporated by reference under 1 Pa. Code § 3.41 (relating to matter not required to be published) and readopted:

28 Pa. Code Chapter 1141 pages 1141-1 to 1141-35 at serial pages (393521) to (393522), (391791) to (391806), (393523) to (393524), (391809) to (391810), (393525) to (393526) and (391813) to (391823).

28 Pa. Code Chapter 1151 pages 1151-1 to 1151-29 at serial pages (393527) to (393528) and (391827) to (391853).

28 Pa. Code Chapter 1161 pages 1161-1 to 1161-17 at serial pages (393529) to (393530), (391857) to (391870) and (393531).

28 Pa. Code Chapter 1171 pages 1171-1 to 1171-13 at serial pages (391873) to (391885).

28 Pa. Code Chapter 1181 pages 1181-1 to 1181-10 at serial pages (391887) to (391896).

28 Pa. Code Chapter 1191 pages 1191-1 to 1191-10 at serial pages (391897) to (91906).

28 Pa. Code Chapter 1211 pages 1211-1 to 1211-15 at serial pages (395023) to (395037).

28 Pa. Code Chapter 1230 pages 1230-1 to 1230-8 at serial pages (391909) to (391916).

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

Fiscal Note: Fiscal Notes Reg # 10-210, 10-212, 10-213, 10-214, 10-215, 10-207, 10-217, and 10-218 remain valid for the republication of the subject temporary regulations.

KEARA KLINEPETER, MSHCPM,
Acting Secretary

[Pa.B. Doc. No. 22-78. Filed for public inspection January 14, 2022, 9:00 a.m.]