

PROPOSED RULEMAKING

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE CH. 5]

Fees

The State Board of Chiropractic (Board) and the Acting Commissioner of the Bureau of Professional and Occupational Affairs (Commissioner) propose to amend Chapter 5 (relating to State Board of Chiropractic) by amending §§ 5.6, 5.15 and 5.16 (relating to fees; licensure examinations; and failure on examination; reexamination) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The first graduated increases for application fees will be implemented on the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin*, and then subsequently increased a second time on July 1, 2026, and a third time on July 1, 2028.

The increased biennial registration fees will be effective on the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin*, enabling the Board to implement the first increase for the September 2, 2024—September 1, 2026 biennial registration period. This first increase will impact licenses that expire on September 1, 2024. The fee will subsequently increase a second time for the September 2, 2026—September 1, 2028 biennial registration, impacting licenses that expire on September 1, 2026, and then increase a third time for the September 2, 2028—September 1, 2030 biennial registration period, impacting licenses that expire on September 1, 2028, and thereafter.

Statutory Authority

Under section 302(3) of the Chiropractic Practice Act (act) (63 P.S. § 625.302(3)), the Board is authorized to promulgate rules and regulations necessary to carry out the act. Under section 1101(a) of the act (63 P.S. § 625.1101(a)), “[t]he board shall, by regulation, fix the fees required for examination, licensure, renewal of licenses and limited licenses.” Section 1101(b) of the act provides that if the revenues raised by fees, fines and civil penalties imposed are not sufficient to meet expenditures over a 2-year period, the Board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures. Additionally, section 502 of the act (63 P.S. § 625.502) provides the nature and content of the examination.

The Commissioner is appointed by the Governor and has a number of powers and duties. Specifically, under section 810(a)(7) of The Administrative Code of 1929 (71 P.S. § 279.1(a)(7)), the Commissioner has the power and duty, “[u]nless otherwise provided by law, to fix the fees to be charged by the several professional and occupational examining boards within the department.”

Background and Purpose

This proposed rulemaking increases application fees to reflect updated costs of processing applications and increases the Board’s biennial registration fees to ensure its revenue meets or exceeds its current and projected expenses. The Board last increased its fees in 1996.

This proposed rulemaking would increase the following application fees on a graduated basis: application for chiropractic licensure by examination; application for chiropractic licensure by reciprocity; application for certification to use adjunctive procedures; and application for continuing education course approval. Approximately 916 applicants will be impacted annually by the increased application fees.

The Board is also implementing a graduated biennial registration fee increase for chiropractors. There are approximately 4,011 licensed chiropractors who will be required to pay more for biennial registration. Chiropractic licenses expire on September 1 of every even numbered year. The first of three graduated biennial registration fee increases will be implemented and in effect for the September 2, 2024—September 1, 2026 biennial registration period.

Lastly, this proposed rulemaking would eliminate references to the Pennsylvania Chiropractic Law Examination (PCLE), including the PCLE fee, to reflect the Board’s current license application procedure. Other health boards under the Bureau of Professional and Occupational Affairs (Bureau) do not perform this type of testing and the Board no longer believes testing an applicant’s knowledge of Pennsylvania law is a necessary component of licensure.

The Board’s operations are supported from the revenue it generates through fees, fines and civil penalties. The act provides that the Board shall increase fees when expenditures outpace revenue. The majority of general operating expenses of the Board are borne by the licensee population through revenue generated by the biennial registration of licenses. A small percentage of its revenue comes from application fees, fines and civil penalties. Board expenses are the result of direct charges, timesheet-based charges and licensee-based charges.

The Board receives an annual report from the Department of State’s Bureau of Finance and Operations (BFO) regarding the Board’s income and expenses. The BFO presented the following information to the Board at its public meeting on February 24, 2022.

In Fiscal Years (FY) 2018-2019 and 2019-2020, the Board incurred expenses of \$535,006.75 and \$581,536.81, respectively, and received \$884,530.72 and \$43,090.33 in revenue, respectively. In other words, over that 2-year time frame, the Board’s total expenses (\$1,116,543.56) outpaced its total revenue (\$927,621.05) by \$188,922.51. The Board’s overall remaining balance at the end of FY 2019-2020 was \$1,685,626.02.

In FYs 2020-2021 and 2021-2022, the Board’s expenses were \$563,936.23 and \$540,000 (projected), respectively, with revenues of \$854,455.90 and \$43,000 (projected), respectively. In other words, over that 2-year time frame, the Board’s total expenses (\$1,103,936.23) outpaced its total revenue (\$897,455.90) by \$206,480.33. The Board’s overall remaining balance at the end of FY 2021-2022 was \$1,479,145.69.

In FYs 2022-2023 and 2023-2024, the Board’s expenses were projected to be \$581,000 and \$556,000, respectively, with revenues projected to be \$890,000 and \$43,000, respectively, meaning for that 2-year time frame, the Board’s total expenses (\$1,137,000) are projected to outpace its total revenue (\$933,000) by \$204,000. The Board’s

overall remaining balance at the end of FY 2023-2024 is projected to be \$1,275,145.69.

According to the BFO's projections, if the Board were to keep its current fee structure in place (no increases for any of its fees), the Board's annual revenue would remain at \$933,000 for each of the next 6 years. However, its expenses are projected to grow each year, so that the amount the Board would be spending above and beyond its revenue would become increasingly larger each successive year. The Board's projected revenue would fall short of meeting its expenses by \$238,000 in FY 2024-2025/FY 2025-2026, then by \$273,000 in FY 2026-2027/FY 2027-2028, and then by \$309,000 in FY 2028-2029/FY 2029-2030. Those projections also show a significant reduction in the Board's overall remaining balance, which by the end of FY 2029-2030 would be down to \$455,145.

Given that its revenues generated by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period, the Board voted on February 24, 2022, to adopt the proposed graduated fee increases for application and biennial registration fees contained in the BFO's report.

Description of Proposed Amendments

The Board proposes to amend § 5.6 to set forth graduated fee schedules for application fees and biennial registration fees, while retaining certain other fees as-is (no increases). In doing so, the Board proposes to delete the existing fee schedule and add a new graduated fee schedule. Proposed subsection (a) lists the graduated schedule of fees for applications for licensure (by examination and by reciprocity), applications for certification to use adjunctive procedures and applications for approval of continuing education courses, along with corresponding effective dates. The Board also reviewed its fees for limited licenses, license restoration, and certification of grades or licensure, and determined that the current fee amounts still cover the cost to process each of those respective items. Therefore, the fee amounts for those three items are not affected by this proposed rulemaking; they will remain at their current respective amounts.

The Board proposes to add subsection (b), which sets forth the graduated schedule of fees and corresponding effective dates for biennial registration. The Board adopted the graduated fee schedule in an effort to minimize the impact of fee increases to licensees and to ensure that fee increases only occur when it is fiscally necessary to do so.

The proposed fee increases under § 5.6(a) are structured to be implemented on a graduated basis so that the fees collected during each biennium reflect the anticipated costs of processing the respective applications for that biennium. These fees are designed to cover the cost to process applications and are borne by individual applicants. Actual cost calculations for application fees are based upon the following formula:

$$\begin{array}{l} \text{number of minutes to perform the function} \\ \times \\ \text{pay rate for the classification of the personnel} \\ \text{performing the function} \end{array}$$

Application fees are based on time study reports created within the Bureau that identify each step in the process and the amount of time it takes to process one application. That amount is multiplied by the anticipated

application requests for 1 year (multiplied by two since the increases are biennial). Application fees are almost entirely dependent upon personnel-related costs.

Under § 5.6(a), the first application fee increases will become effective on the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin*. The second increases would take effect on July 1, 2026, and then the third increases on July 1, 2028.

Under § 5.6(b), the graduated increases for the biennial registration fee will be implemented beginning with the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin*, so that the first increase will be in effect for the September 2, 2024—September 1, 2026, biennial period, the second increase will be in effect for the September 2, 2026—September 1, 2028 biennial period, and the third increase will be in effect for the September 2, 2028—September 1, 2030 biennial period, and thereafter.

During its presentation to the Board on February 14, 2022, the BFO reported that consideration was given to merely pursuing increases in the application fees (and not seek an increase in the biennial registration fee). The BFO's projections show that increasing application fees alone would not be enough to produce sufficient revenue to meet or exceed expenses over the next 6 years.

The BFO projects that the new application and biennial registration fee structure approved by the Board and set forth in this proposed rulemaking will produce biennial revenue of \$1.083 million in FY 2024-2025 and FY 2025-2026, which will narrow the gap between its expenses (\$1.171 million) to \$88,000; biennial revenue of \$1.162 million in FY 2026-2027 and FY 2027-2028, which will narrow the gap between its expenses (\$1.206 million) to \$44,000; and biennial revenue of \$1.246 million in FY 2028-2029 and FY 2029-2030, which will be sufficient to exceed its expenses (\$1.242 million) and still leave an overall remaining balance of \$1,147,145.

The Board also proposes to delete §§ 5.15(a)(2) and (e) and 5.16(b), thereby eliminating references to the PCLE, which the Board decided to discontinue.

Proposed Application Fees

As set forth as follows and in § 5.6(a), the proposed graduated increases will impact applicants as follows:

Chiropractic licensure by examination

Each year, the Board receives approximately 175 applications for chiropractic licensure by exam (the equivalent of about 350 every 2 years). The graduated increases for this application fee will generate additional revenue as follows:

FY 2024-2025 through FY 2025-2026: The fee increase from \$25 to \$105 will generate an additional \$28,000 in application fees.

FY 2026-2027 through FY 2027-2028: The fee increase from \$105 to \$115 will generate an additional \$3,500 in application fees.

FY 2028-2029 through FY 2029-2030: The fee increase from \$115 to \$126 will generate an additional \$3,850 in application fees.

Chiropractic licensure by reciprocity

Each year, the Board receives approximately 15 applications for chiropractic licensure by reciprocity (or about

30 every 2 years). The graduated increases for this application fee will generate additional revenue as follows:

FY 2024-2025 through FY 2025-2026: The fee increase from \$65 to \$150 will generate an additional \$2,550 in application fees.

FY 2026-2027 through FY 2027-2028: The fee increase from \$150 to \$164 will generate an additional \$420 in application fees.

FY 2028-2029 through FY 2029-2030: The fee increase from \$164 to \$180 will generate an additional \$480 in application fees.

Adjunctive procedures certification

Each year, the Board receives approximately 126 applications for certification to use adjunctive procedures (or about 252 every 2 years). The graduated increases for this fee will generate additional revenue as follows:

FY 2024-2025 through FY 2025-2026: The fee increase from \$25 to \$105 will generate an additional \$20,160 in application fees.

FY 2026-2027 through FY 2027-2028: The fee increase from \$105 to \$115 will generate an additional \$2,520 in application fees.

FY 2028-2029 through FY 2029-2030: The fee increase from \$115 to \$126 will generate an additional \$2,772 in application fees.

Continuing education course approval

Each year, the Board receives approximately 600 applications for approval of continuing education courses (or about 1,200 every 2 years). The graduated increases for this fee will generate additional revenue as follows:

FY 2024-2025 through FY 2025-2026: The fee increase from \$30 to \$100 will generate an additional \$84,000 in fees.

FY 2026-2027 through FY 2027-2028: The fee increase from \$100 to \$110 will generate an additional \$12,000 in fees.

FY 2028-2029 through FY 2029-2030: The fee increase from \$110 to \$120 will generate an additional \$12,000 in fees.

Proposed biennial registration fees

As set forth as follows and in § 5.6(b), the proposed graduated increases will impact licensees as follows:

Chiropractors

There are approximately 4,011 chiropractors who are subject to the current biennial registration fee of \$210 and who will be impacted by the proposed biennial registration fee increases. The BFO projects that the overall number of licensed chiropractors will decrease slightly (to about 3,810) over the next 6 to 7 years. The graduated biennial registration fee increases will generate additional revenue as follows:

FY 2024-2025 and FY 2025-2026: The fee increase from \$210 to \$225 will generate an additional \$57,150 in revenue.

FY 2026-2027 and FY 2027-2028: The fee increase from \$225 to \$241 will generate an additional \$60,960 in revenue.

FY 2028-2029 and FY 2029-2030: The fee increase from \$241 to \$258 will generate an additional \$64,770 in revenue.

Fiscal Impact and Paperwork Requirements

The proposed amendments will increase application and biennial registration fees on a graduated basis. Applicants, licensees and registrants will be required to comply with the regulation. The fees may be paid by applicants, licensees or registrants or may be paid by their employers, should their employers choose to pay these fees. This proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions of the Commonwealth.

Approximately 916 applicants will be impacted by the increased application fees. Specifically, the number of applicants affected are as follows: 175 applications for licensure by exam; 15 applications for licensure by reciprocity; 126 applications for certification to use adjunctive procedure; and 600 applications for continuing education course approvals.

Based upon the graduated application fee increases, the total economic impact is as follows:

FYs 2024-2025 and 2025-2026:	\$134,710
FYs 2026-2027 and 2027-2028:	\$18,440
FYs 2028-2029 and 2029-2030:	\$19,102
<u>Total:</u>	<u>\$172,252</u>

All licensed chiropractors will be impacted by the increased biennial registration fees. Based upon the above graduated increases, the economic impact is as follows:

FYs 2024-2025 and 2025-2026:	\$57,150
FYs 2026-2027 and 2027-2028:	\$60,960
FYs 2028-2029 and 2029-2030:	\$64,770
<u>Total:</u>	<u>\$182,880</u>

Thus, the total economic impact to applicants, licensees, registrants or employers (if employers choose to pay application or biennial registration fees) is \$355,132. This amount reflects the economic impact that will occur as a result of the fee increases between FY 2024-2025 and FY 2029-2030.

This proposed rulemaking will require the Board to revise certain applications and biennial registration forms to reflect the new fees; however, the amendments will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned. Additionally, the BFO provides the Board with an annual report detailing the Board's financial condition. In this way, the Board continuously monitors the adequacy of its fee schedule.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 25, 2023, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional

Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Board Counsel, Department of State, State Board of Chiropractic, P.O. Box 69523, Harrisburg, PA 17106-9523 or by email at RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference "Regulation No. 16A-4335 (Fees)" when submitting comments.

WILLIAM AUKERMAN, DC,

Chairperson, State Board of Chiropractic

ARION R. CLAGGETT,

Acting Commissioner,

Bureau of Professional and Occupational Affairs

Fiscal Note: 16A-4335. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 5. STATE BOARD OF CHIROPRACTIC

Subchapter A. GENERAL PROVISIONS

§ 5.6. Fees.

[The Board will charge the following fees:

- Pennsylvania chiropractic law examination..... \$87
- Application for licensure by examination \$25
- Application for licensure by reciprocity..... \$65
- Biennial registration \$210
- Limited license \$30
- Adjunctive procedure certification \$25
- Certification of grades or licensure \$25
- Application for continuing education course approval \$30
- License restoration\$25]

(a) An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

(Editor's Note: The blank in the first column of effective dates refers to the date of publication of the final-form rulemaking in the Pennsylvania Bulletin).

		<i>Effective July 1, 2026</i>	<i>Effective July 1, 2028</i>
Licensure by examination	\$105	\$115	\$126
Licensure by reciprocity	\$150	\$164	\$180
Limited license	\$30	\$30	\$30
Adjunctive procedures certification	\$105	\$115	\$126
Certification of grades or licensure	\$25	\$25	\$25
Continuing education course approval	\$100	\$110	\$120
Licensure restoration	\$25	\$25	\$25

(b) An applicant for biennial registration shall pay the following fees:

	<i>September 2, 2024— September 1, 2026 Biennial Registration Fee</i>	<i>September 2, 2026— September 1, 2028 Biennial Registration Fee</i>	<i>September 2, 2028— September 1, 2030 Biennial Registration Fee and thereafter</i>
Chiropractor	\$225	\$241	\$258

Subchapter B. LICENSURE, CERTIFICATION, EXAMINATION AND REGISTRATION PROVISIONS

§ 5.15. Licensure examinations.

(a) To qualify for licensure by examination, an applicant shall successfully complete the following examinations:

(1) Parts I, II, III and IV of the National Board Examination.

(2) [The Pennsylvania Chiropractic Law Examination developed, prepared, administered and

graded by the professional testing organization approved by the Board] [Reserved].

(b) The applicant shall apply to the NBCE for admission to the National Board Examinations and pay the required fees at the direction of the NBCE.

* * * * *

(d) Passing scores on the National Board Examinations shall be established by the NBCE for each administration of the National Board Examinations in accordance with

section 502(e) of the act (63 P.S. § 625.502(e)). A passing score on Part IV of the National Board Examination obtained at any time since Part IV has been offered by the NBCE will satisfy the Part IV National Board Examination requirement under § 5.12(a)(4) (relating to licensure by examination).

(e) [**An application to take the Pennsylvania Chiropractic Law Examination shall be submitted with the required application fee specified in § 5.6 (relating to fees) to the Board approved professional testing organization at least 60 days prior to the date of the examination**] [Reserved].

§ 5.16. Failure on examination; reexamination.

(a) An applicant who fails one or more of the National Board Examinations is eligible for reexamination in accordance with the rules and regulations of the NBCE.

(b) [**An applicant who fails the Pennsylvania Chiropractic Law Examination may take a reexamination within 2 years. If the applicant fails the reexamination, the applicant may be required to complete studies as directed by the Board prior to reapplication for licensure**] [Reserved].

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