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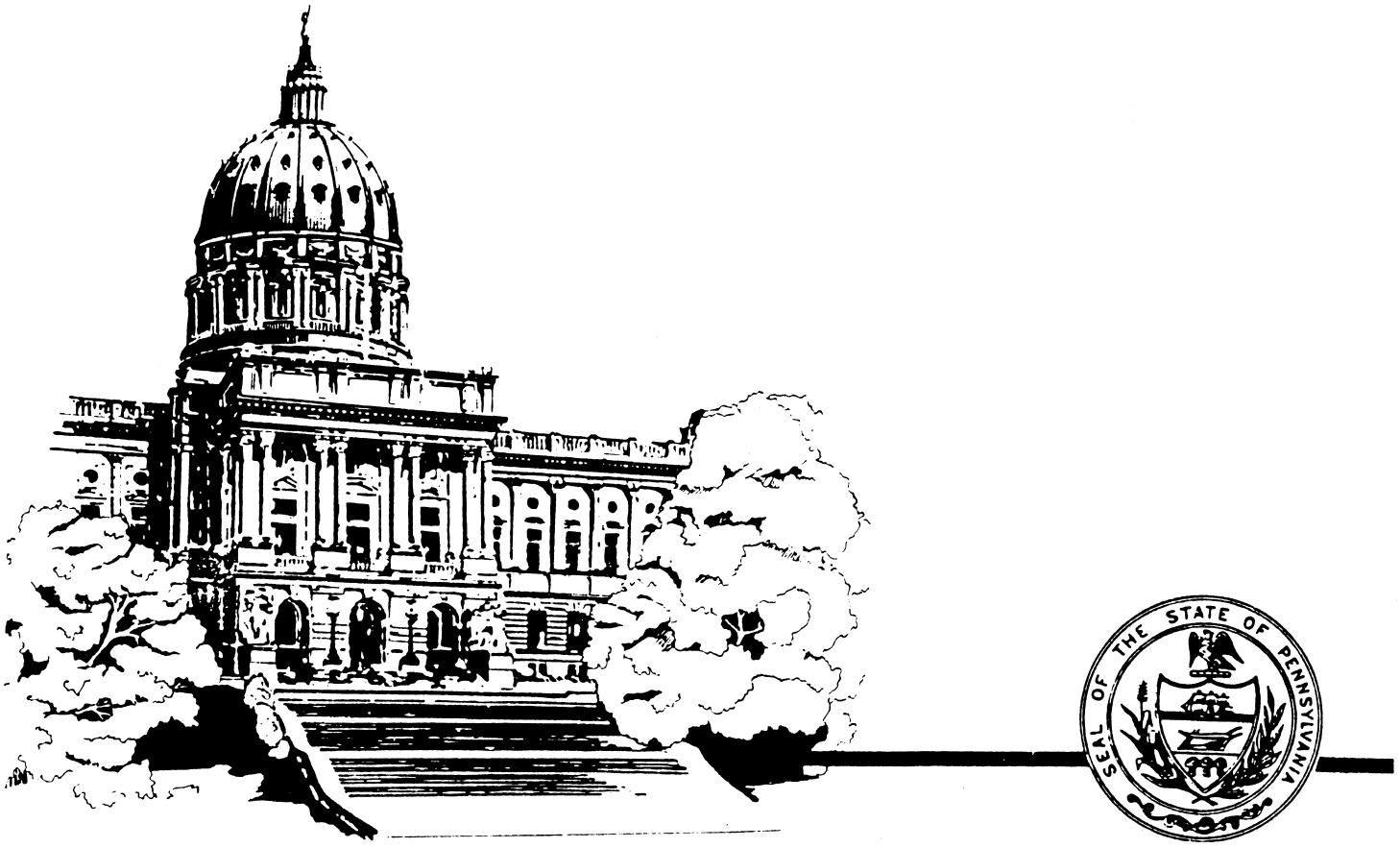
Part II

This part contains
the Rules and Regulations
and the Proposed Rulemakings



RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 14]

Special Education Services and Programs; Intellectual Disability Terminology Update

The State Board of Education (Board) amends Chapter 14 (relating to special education services and programs) to read as set forth in Annex A in this final-omitted rulemaking.

Statutory Authority

The Board adopts this final-omitted rulemaking under the authority granted by sections 1372 and 2603-B of the Public School Code of 1949, as amended (24 P.S. §§ 13-1372 and 26-2603-B).

Purpose

This final-omitted rulemaking amends §§ 14.123—14.125, 14.132, 14.143 and 14.162 by replacing the term "mental retardation" with the term "intellectual disability" and by replacing the term "mentally retarded" with the term "intellectual disability." These terminology updates are presented for clarity and for consistency with Rosa's Law (Pub.L. No. 111-256); the regulations found at 34 CFR 300.8(a)(1), (c)(6) and (7) and (10)(ii), 300.309(a)(3)(ii) and 300.311(a)(6); and the Mental Health and Intellectual Disability Act of 1966 (50 P.S. §§ 4101—4704).

Background

Currently, the regulations in Chapter 14 use the terms "mental retardation" and "mentally retarded." Rosa's Law (Pub.L. No. 111-256) amended sections 7(21)(A)(iii), 204(b)(2)(C)(v) and 501(a) of the Rehabilitation Act of 1973 (29 U.S.C. §§ 705(21)(A)(iii), 764(b)(2)(C)(v) and 791(a)), sections 601(c)(12)(C) and 602(3)(A)(i) and 30(C) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400(c)(12)(C) and 1401(3)(A)(i) and (30)(C)), section 760(2)(A) of the Higher Education Act of 1965 (20 U.S.C. § 1140(2)(A)) and section 7202(16)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7512(16)(E)) (subsequently renumbered as section 6202(16)(E) and repealed), by removing the term "mental retardation" and replacing it with the term "intellectual disability." See also 82 FR 31910 (July 11, 2017). The act of November 22, 2011 (P.L. 420, No. 105) amended the Mental Health and Mental Retardation Act of 1966 to read as the "Mental Health and Intellectual Disability Act of 1966" and replaced the defined term and references to "mental retardation" with "intellectual disability."

The Board amends the terminology currently used in Chapter 14 to be consistent with the aforementioned changes in terminology that were enacted in Federal and State law. This final-omitted rulemaking supports individuals with an intellectual disability by replacing the terms "mentally retarded" and "mental retardation" with the term "intellectual disability." The benefit of this final-omitted rulemaking is to promote respect, community integration and an array of opportunities for an individual with an intellectual disability by using words that are positive and up to date in the Board's regulations.

Summary of this Final-Omitted Rulemaking

This final-omitted rulemaking amends §§ 14.123, 14.124(a), 14.125(3)(ii), 14.132(a)(2)(vii) and (d), 14.143(b) and 14.162(a).

Amendments to these sections replace the term "mental retardation" with the term "intellectual disability."

§§ 14.124(c) (Reevaluation) and 14.162(a) (Impartial due process hearing and expedited due process hearing)

Amendments to these sections replace the term "mentally retarded" with the term "intellectual disability."

Affected Parties

This final-omitted rulemaking will affect public school entities, including school districts, area career and technical schools, intermediate units and their employees. This final-omitted rulemaking will also affect citizens of this Commonwealth with school-aged children and their school-aged children.

Fiscal Impact and Paperwork Estimates

This final-omitted rulemaking makes amendments for clarity and for consistency with Rosa's Law (Pub.L. No. 111-256) and the Mental Health and Intellectual Disability Act of 1966. This final-omitted rulemaking does not establish new requirements that carry an additional cost or create new paperwork requirements for the regulated community.

Effective Date

This final-omitted rulemaking will take effect upon notice or publication in the *Pennsylvania Bulletin*.

Sunset Date

The Board will review the effectiveness of Chapter 14 every 4 years in accordance with the Board's policy and practice regarding its regulations. Thus, no sunset date is necessary.

Omission of Proposed Rulemaking

Notice of proposed rulemaking is omitted in accordance with section 204(3) of the Commonwealth Documents Law (45 P.S. § 1204(3)) and 1 Pa. Code § 7.4(3) (relating to omission of notice of proposed rulemaking), because the Board finds for good cause that the proposed rulemaking is unnecessary and that a delay in the promulgation of these amendments is contrary to the public interest. Under Federal and State law, the terminology "intellectual disability" has replaced the archaic terminology "mental retardation." See Rosa's Law (Pub.L. No. 111-256) and the Mental Health and Intellectual Disability Act of 1966.

Although this final-omitted rulemaking is not mandated by any Federal or State law, court orders or Federal regulations, this final-omitted rulemaking is in conformance with Federal and State law. See Rosa's Law (Pub.L.. No. 111-256) and the Mental Health and Intellectual Disability Act of 1966. Because these amendments are for the purpose of making the terminology in the Board's regulations consistent with the terminology used in Federal and State law, it is unnecessary to hold a public comment period because the Federal and State law dictate the terminology used and consideration of alternative constructs through public comment would be inconsistent with terminology used elsewhere.

Further, individuals affected by an intellectual disability, friends and family members of affected individuals,

providers of services and supports for individuals with an intellectual disability, and county mental health/intellectual disability programs support the use of the up-to-date and appropriate term "intellectual disability" to replace the archaic term "mental retardation." This final-omitted rulemaking promotes respect, community integration and an array of opportunities for an individual with an intellectual disability by using a term that is positive and up to date.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act, (71 P.S. § 745.5a(c)), on August 2, 2023, the Board submitted a copy of this final-omitted rulemaking, and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Education Committee of the Senate and the chairperson of the Education Committee of the House of Representatives. On the same date, the final-omitted rulemaking was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on September 20, 2023, this final-omitted rulemaking was deemed approved by the Education Committee of the Senate and the Education Committee of the House of Representatives. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 21, 2023, and approved this final-omitted rulemaking.

Contact Person

Interested persons may contact Karen Molchanow, Executive Director, State Board of Education, ra-stateboardofed@pa.gov, 333 Market Street, 1st Floor, Harrisburg, PA 17126.

Findings

The Board finds that:

(a) Notice of proposed rulemaking is omitted in accordance with section 204(3) of the Commonwealth Documents Law and 1 Pa. Code § 7.4(3). The affected individuals with an intellectual disability, friends and family members of affected individuals, providers of services and supports for individuals with an intellectual disability and educational programs have previously indicated their support the use of the up-to-date and appropriate term "intellectual disability." This final-omitted rulemaking promotes respect, community integration and an array of opportunities for an individual with an intellectual disability by using a term that is positive and up to date. The Federal government also has indicated its support for the use of the up-to-date and appropriate term "intellectual disability." Additionally, public comment will not change the terminology used. Therefore, the Board, based on the reasons previously stated, finds that notice of proposed rulemaking is unnecessary and that a delay in the promulgation of these amendments is contrary to the public interest.

(b) The amendment of the regulations in the manner provided in this order is necessary and appropriate for the administration of the Board's regulations in Chapter 14.

Order

Acting under the authority of the Public School Code of 1949, the Board orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 14, are amended by amending §§ 14.123—14.125, 14.132, 14.143 and 14.162 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Executive Director of the Board shall submit a copy of this final-omitted rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Executive Director of the Board shall submit this final-omitted rulemaking to IRRC and the Education Committee of the Senate and the Education Committee of the House of Representatives, as required by law.

(d) The Executive Director of the Board shall certify this final-omitted rulemaking, as approved for legality and form, and deposit it with the Legislative Reference Bureau as required by law.

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

KAREN MOLCHANOW,
Executive Director

(*Editor's Note*: See 53 Pa.B. 6319 (October 7, 2023) for IRRC's approval.)

Fiscal Note: 6-341. No fiscal impact; recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS

CHILD FIND, SCREENING AND EVALUATION

§ 14.123. Evaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.306 (relating to determination of eligibility), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, intellectual disability, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.

* * * * *

§ 14.124. Reevaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.303 (relating to reevaluations), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, intellectual disability, multiple disabilities, other health impairment, specific learning disability and traumatic brain injury.

* * * * *

(c) Students with disabilities who are identified as having an intellectual disability shall be reevaluated at least once every 2 years.

* * * * *

§ 14.125. Criteria for the determination of specific learning disabilities.

This section contains the State-level criteria for determining the existence of a specific learning disability. Each school district and intermediate unit shall develop procedures for the determination of specific learning disabilities that conform to criteria in this section. These procedures shall be included in the school district's and intermediate unit's special education plan in accordance with § 14.104(b) (relating to special education plans). To determine that a child has a specific learning disability, the school district or intermediate unit shall:

* * * * *

(3) Have determined that its findings under this section are not primarily the result of:

(i) A visual, hearing or orthopedic disability.

(ii) Intellectual disability.

(iii) Emotional disturbance.

(iv) Cultural factors.

(v) Environmental or economic disadvantage.

(vi) Limited English proficiency.

* * * * *

IEP

§ 14.132. ESY.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), school entities shall use the following standards for determining whether a student with disabilities requires ESY as part of the student's program:

* * * * *

(2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors; however, no single factor will be considered determinative:

* * * * *

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe intellectual disability, degenerative impairments with mental involvement and severe multiple disabilities.

* * * * *

(d) Students with severe disabilities such as autism/pervasive developmental disorder, serious emotional disturbance; severe intellectual disability; degenerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for ESY services to be provided as follows:

* * * * *

EDUCATIONAL PLACEMENT

§ 14.143. Disciplinary placements.

* * * * *

(b) A removal from school is a change of placement for a student who is identified with an intellectual disability, except if the student's actions are consistent with 34 CFR 300.530(g)(1)—(3) (relating to authority of school personnel).

PROCEDURAL SAFEGUARDS

§ 14.162. Impartial due process hearing and expedited due process hearing.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.504 (relating to procedural safeguard notice), with regard to a student who has an intellectual disability or who is thought to have an intellectual disability, a notice when mailed shall be issued to the parent by certified mail (addressee only, return receipt requested).

* * * * *

[Pa.B. Doc. No. 23-1675. Filed for public inspection December 1, 2023, 9:00 a.m.]

Title 22—EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 711]

Charter School and Cyber Charter School Services and Programs for Children with Disabilities; Intellectual Disability Terminology Update

The Department of Education (Department) amends Chapter 711 (relating to charter school and cyber charter school services and programs for children with disabilities) by replacing the term "mental retardation" with the term "intellectual disability" and by replacing the term "mentally retarded" with "an individual with an intellectual disability" as set forth in Annex A.

Statutory Authority

The Department adopts this final-omitted rulemaking under the authority granted by sections 1701-A—1732-A, 1749-A(b)(8) and 1751-A of the Public School Code of 1949, as amended, (24 P.S. §§ 17-1701-A—17-1732-A, 17-1749-A(b)(8) and 17-1751-A).

Omission of Proposed Rulemaking

Notice of proposed rulemaking is omitted in accordance with section 204(3) of the Commonwealth Documents Law (45 P.S. § 1204(3)) and 1 Pa. Code § 7.4(3) (relating to omission of notice of proposed rulemaking) because the Department finds for good cause that the proposed rulemaking is unnecessary and that a delay in the promulgation of these amendments is contrary to the public interest. Under Federal and State law, the terminology "intellectual disability" has replaced the archaic terminology "mental retardation" and "mentally retarded." See Rosa's Law (Pub.L. No. 111-256) and the Mental Health and Intellectual Disability Act of 1966 (50 P.S. §§ 4101—4704).

Although this regulation is not mandated by any Federal or State law, court orders, or Federal regulations, this final-omitted rulemaking is in conformance with Federal and State law. See Rosa's Law (Pub.L. No. 111-256) and the Mental Health and Intellectual Disability Act of 1966. Because the amendments are for the purpose of making the terminology in the regulations consistent with the terminology used in Federal and State law, it is unnecessary to hold a public comment period because the Federal and State law dictate the terminology used and public comment would not change the terminology used.

Further, the affected individuals with an intellectual disability, friends and family members of affected individuals, providers of services and supports for individuals with an intellectual disability and county mental health/intellectual disability programs support the use of the up-to-date and appropriate term "intellectual disability" to replace the archaic terms "mental retardation" and "mentally retarded." This final-omitted rulemaking promotes respect, community integration and an array of opportunities for an individual with an intellectual disability by using a term that is positive and up to date, and the Department seeks to make this regulatory change in an expeditious manner.

Purpose

This final-omitted rulemaking amends §§ 711.22, 711.24, 711.25, 711.44 and 711.61 by replacing the term "mental retardation" with the term "intellectual disability" and by replacing the term "mentally retarded" with "having an intellectual disability" for clarity and for

consistency with Rosa's Law (Pub.L. No. 111-256), the regulations found at 34 CFR 300.8(a)(1), (c)(6), (7) and (10)(ii), 300.309(a)(3)(ii) and 300.311(a)(6) (relating to child with a disability; determining the existence of a specific learning disability; and specific documentation for the eligibility determination); and the Mental Health and Intellectual Disability Act of 1966.

Background

Currently, regulations in Chapter 711 use the term "mental retardation." Rosa's Law (Pub.L. No. 111-256) amended sections 7(21)(A)(iii), 204(b)(2)(C)(v) and 501(a) of the Rehabilitation Act of 1973 (29 U.S.C. §§ 705(21)(A)(iii), 764(b)(2)(C)(v) and 791(a)), sections 601(c)(12)(C) and 602(3)(A)(i) and 30(C) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400(c)(12)(C) and 1401(3)(A)(i) and (30)(C)), section 760(2)(A) of the Higher Education Act of 1965 (20 U.S.C. § 1140(2)(A)) and section 7202(16)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7512(16)(E)) (subsequently renumbered as section 6202(16)(E) and repealed), by removing the term "mental retardation" and replacing it with the term "intellectual disability." See also 82 FR 31910 (July 11, 2017), Rules and Regulations. The act of November 22, 2011 (P.L. 420, No. 105) amended the Mental Health and Mental Retardation Act of 1966 (50 P.S. §§ 4101—4704) to read as the "Mental Health and Intellectual Disability Act of 1966" and replaced the defined term and references to "mental retardation" with "intellectual disability."

Affected Parties

This final-omitted rulemaking will affect public, private, parochial and nonpublic schools, including charter schools, cyber charter schools, vocational schools, intermediate units, special education and home education programs, and their employees. This final-omitted rulemaking will also affect citizens of this Commonwealth with school-aged children and their school-aged children.

Fiscal Impact and Paperwork Estimates

This final-omitted rulemaking will make amendments for clarity and for consistency with Rosa's Law, the regulations found at 34 CFR 300.8(a)(1), (c)(6), (7) and (10)(ii), 300.309(a)(3)(ii) and 300.311(a)(6), and the Mental Health and Intellectual Disability Act of 1966. The Department's final-omitted rulemaking does not establish new requirements that carry an additional cost or create new paperwork requirements for the regulated community.

Effective Date

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

Sunset Date

The Department will review the effectiveness of Chapter 711 every 4 years in accordance with the Department's policy and practice regarding its regulations. Thus, no sunset date is necessary.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on August 2, 2023, the Department submitted a copy of this final-omitted rulemaking, and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Education Committee of the Senate and the chairperson of the Education Committee of the House of Representatives. On the same date, the final-omitted regulation was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on September 20, 2023, this final-omitted regulation was deemed approved by the Education Committee of the Senate and the Education Committee of the House of Representatives. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 21, 2023, and approved this final-omitted regulation.

Public Comments and Contact Person

Although this rulemaking is being adopted without publication as a final-omitted rulemaking, interested persons and individuals affiliated with education are invited to submit written comments, questions, suggestions, commendations, concerns or objections regarding this final-omitted rulemaking to, Carole Clancy, Director, Bureau of Special Education, caclancy@pa.gov, 333 Market Street, Harrisburg, PA 17126, or John Gombocz, Special Education Advisor, jgombocz@pa.gov, 607 South Drive, Harrisburg, PA 17126. Persons with disabilities who require an alternative means of providing public comment may make arrangements by calling John Gombocz at (717) 772-3745.

Findings

The Department finds that:

(a) Notice of proposed rulemaking is omitted in accordance with section 204(3) of the Commonwealth Documents Law and 1 Pa. Code § 7.4(3). The affected individuals with an intellectual disability, friends and family members of affected individuals, providers of services and supports for individuals with an intellectual disability and educational programs support the use of the up-to-date and appropriate term "intellectual disability." This final-omitted rulemaking promotes respect, community integration and an array of opportunities for an individual with an intellectual disability by using a term that is positive and up to date. It is unnecessary to hold a public comment period because Federal and State law dictate the terminology used and public comment would not change the terminology used. Therefore, based on the reasons previously stated, the Department finds that notice of proposed rulemaking is unnecessary and that a delay in the promulgation of these amendments is contrary to the public interest.

(b) The adoption of this final-omitted rulemaking in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Department's education regulations found in Chapter 711.

Order

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

(a) The regulations of the Department, 22 Pa. Code Chapter 711, are amended by amending §§ 711.22, 711.24, 711.25, 711.44 and 711.61 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of Education shall submit this final-omitted rulemaking to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary of Education shall submit this final-omitted rulemaking to IRRC and the Education Committee of the Senate and the Education Committee of the House of Representatives, as required by law.

(d) The Secretary of Education shall certify this Order and Annex A, as approved for legality and form, and deposit them with the Legislative Reference Bureau as required by law.

(e) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

DR. KHALID N. MUMIN,
Secretary

(*Editor's Note*: See 53 Pa.B. 6319 (October 7, 2023) for IRRC's approval.)

Fiscal Note: 6-342. No fiscal impact; recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XX. CHARTER SCHOOLS

CHAPTER 711. CHARTER SCHOOL AND CYBER CHARTER SCHOOL SERVICES AND PROGRAMS FOR CHILDREN WITH DISABILITIES

IDENTIFICATION AND EVALUATION

§ 711.22. Reevaluation.

* * * * *

(c) Children with disabilities who are identified as having an intellectual disability shall be reevaluated at least once every 2 years.

§ 711.24. Evaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.306 (relating to determination of eligibility), must include a certified school psychologist when evaluating a child for autism, emotional disturbance, intellectual disability, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.

* * * * *

§ 711.25. Criteria for the determination of specific learning disabilities.

Following are State-level criteria for determining the existence of a specific learning disability. Each charter school and cyber charter school shall develop procedures for the determination of specific learning disabilities that conform to criteria in this section. These procedures shall be included in the school's charter application and annual report. To determine that a child has a specific learning disability, the charter school or cyber charter school shall:

* * * * *

(3) Have determined that its findings under this section are not primarily the result of any of the following:

(i) A visual, hearing or orthopedic disability.

(ii) Intellectual disability.

(iii) Emotional disturbance.

(iv) Cultural factors.

(v) Environmental or economic disadvantage.

(vi) Limited English proficiency.

* * * * *

IEP

§ 711.44. ESY.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), charter schools and cyber charter schools shall use the following standards for determining whether a student with disabilities requires ESY as part of the student's program:

* * * * *

(2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors, however, no single factor will be considered determinative:

* * * * *

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe intellectual disability, degenerative impairments with mental involvement and severe multiple disabilities.

* * * * *

(d) Students with severe disabilities such as autism/pervasive developmental disorder, serious emotional disturbance; severe intellectual disabilities; degenerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for ESY services to be provided as follows:

* * * * *

PROCEDURAL SAFEGUARDS

§ 711.61. Suspension and expulsion.

* * * * *

(c) Any removal from the current educational placement is a change of placement for a student who is identified with an intellectual disability.

* * * * *

[Pa.B. Doc. No. 23-1676. Filed for public inspection December 1, 2023, 9:00 a.m.]

Title 67—TRANSPORTATION

TURNPIKE COMMISSION

[67 PA. CODE CH. 601]

Traffic Regulations

The Turnpike Commission (Commission) hereby amends Chapter 601 (relating to traffic regulations) to read as set forth in Annex A. Specifically, the Commission amends §§ 601.1, 601.3, 601.5, 601.9, 601.12—601.15, 601.17, 601.18 and 601.101—601.103.

A. *Statutory Authority*

The Commission is publishing this final-form rulemaking under the authority of sections 4 and 12 of the act of May 21, 1937 (P.L. 774, No. 211), referred to as the Pennsylvania Turnpike Commission Act (act) (36 P.S. §§ 652d and 652l); 74 Pa.C.S. §§ 8102, 8107, 8116 and 8117; and 75 Pa.C.S. §§ 6110 and 6110.1 (relating to regulation of traffic on Pennsylvania Turnpike; and fare evasion).

B. *Purpose of this Final-Form Rulemaking*

This final-form rulemaking establishes the Commission's statutory authority to promulgate traffic regulations that promote the health, safety and welfare of the Commission's customers traveling on the Turnpike System. The amendments to Chapter 601 amend and improve the regulations and reflect the Commission's conversion to a cashless tolling system, that is, all electronic tolling (AET). The amendments include new policies and procedures regarding special hauling permits for overdimensional/overweight vehicles, update the regulations and chart regarding the transportation of hazardous materials through Turnpike tunnels and revise language regarding vehicles excluded from the Turnpike System

and tandem trailer combinations. The amended regulations also address recent statutory amendments to electronic toll collection and fare evasion. Additional changes include clarifying existing language, deleting or revising obsolete language and other editorial amendments.

C. *Explanation of this Final-Form Rulemaking*

§ 601.1. Definitions

The definition of "Class 9 vehicle" is amended to "over-dimensional/overweight vehicle" in conjunction with the revisions to § 601.14 (relating to over-dimensional/overweight vehicles) and the implementation of a new special hauling permitting process. As part of the Commission's conversion to a cashless tolling system, the Commission has updated and modernized its long-standing Class 9 toll rate for use with AET and the revised permitting process. The phrase "combination of vehicles" is added to clarify that an "over-dimensional/overweight vehicle" could represent other forms of combinations, including tandems. Section 102 of 75 Pa.C.S. (relating to definitions) defines "combination" as "two or more vehicles physically interconnected in tandem." "Tandem" is defined in § 601.1 (relating to definitions) of the Commission's regulations "as a truck tractor, semitrailer and trailer." Therefore, for example, there could be a heavy wrecker (tow truck) towing a bus or a truck tractor. The revised definition also includes the maximum gross weight that may be carried upon any one axle (22,400 pounds).

The definition of "Hazardous material" is amended to reflect the proper citation of said definition as found in 49 CFR Chapter I (relating to pipeline and hazardous materials safety administration, Department of Transportation).

The definition of "max time formula" is deleted because these formulas are determined by business rules rather than a regulation, which the Commission may need to modify periodically.

§ 601.3. Officers

This section is amended to reflect the conversion of the Turnpike to a cashless tolling system and deletes references to toll collection and fare booths. The phrase "other officers" is deleted because the word "officers" already appears in the text for § 601.3 (relating to officers). Likewise, the term "maintenance personnel" is deleted because the term "employees" is intended to capture all Commission employees.

§ 601.5. Hazardous materials

This section is amended to update the existing chart regarding the Commission's policies for the transportation of hazardous materials through Turnpike tunnels. The Federal Motor Carrier Safety Administration and the United States Department of Transportation (USDOT) recognize nine classes as the first level of warning for hazardous materials, and multiple placards can fall into those classes. Title 49 of the *Code of Federal Regulations* sets forth the nine hazardous materials classes, listed by class—not placard. See 49 CFR 173.2 (relating to hazardous materials classes and index to hazard class definitions). The definitions for each class are found in various other subsections of 49 CFR Part 173 (relating to shippers—general requirements for shipments and packagings). The hazard class is the overall category of a hazard material, whereas the placard is the recommended sign placed on a vehicle. Because USDOT has multiple placards for some of the classes, the Commission does not want carriers to focus on a single placard for a specific hazardous materials class. To avoid confusion, the amended chart eliminates "placard name" and now separates hazardous materials classes into prohibited, prohibited in bulk packaging and permitted. Therefore, the amended chart will: (1) recognize and clarify the classes, (2) be easier to read and interpret, and (3) realign the Commission's regulations to remain consistent with Federal law.

The amended chart updates the status of organic peroxide (Class 5.2) as a prohibited hazardous material, which is the only substantive change to the existing chart. The Commission has already been operating under this change since 2014 to remain consistent with Federal placard revisions required for the highway transportation of organic peroxide, which became mandatory on January 1, 2014. At that time, the Commission updated its web site and guidelines for transporting hazardous materials through its tunnels to include the prohibition of organic peroxide (Class 5.2). Therefore, this will not be a newly disclosed prohibited class for Commission customers, but the amended chart will officially reflect the change that was instituted in 2014. Other amendments to this section are editorial.

§ 601.9. U-turns

This section is amended to clarify who may authorize a U-turn on the Turnpike System.

§ 601.12. Toll collection

In 2020, the Commission converted to AET, a cashless tolling system that incorporates electronic toll collection. The Commission no longer issues paper tickets and all tolls are collected by electronic toll collection as defined in 74 Pa.C.S. § 8102 (relating to definitions), which includes E-ZPass and license plate imaging captured by cameras or similar technology (Toll By Plate). Section 8116 of 74 Pa.C.S. (relating to collection and disposition of tolls and other revenue) establishes the Commission's statutory authority to charge and collect tolls, including the right to authorize, fix and revise toll rates for use of the Turnpike System. Section 12 of the act provides similar language. The language of both statutes grants the Commission broad discretion regarding tolling and demonstrates a clear legislative intent that the Commission shall have the sole authority to establish the most efficient and modern methods regarding the collection of tolls. No other governmental entity or agency in the Commonwealth has been granted these powers, which further proves the legislature's intent that the Commission rely on its operational experience and tolling expertise to determine the best way to collect tolls on the Turnpike System.

This section is renamed "Toll collection" formerly "Toll tickets" and is fully amended to reflect the conversion to AET. The new language incorporates the definition of "electronic toll collection" which includes the implementation of license plate tolling and any other technology used to identify vehicles traveling the Turnpike System and a citation to 74 Pa.C.S. § 8116.

§ 601.13. Evasion of fare

The General Assembly enacted the act of November 25, 2013 (P.L. 974, No. 89) and codified the language of 75 Pa.C.S. § 6110.1, which sets the penalties for fare evasion or attempted fare evasion committed on the Turnpike System, including any affirmative actions, which is a misdemeanor of the third degree. Section 601.13 (relating to evasion of fare) is amended to reference the language and penalties set forth in 75 Pa.C.S. § 6110.1. This section is also amended to reflect the

elimination of paper toll tickets as part of the Commission's conversion to a cashless tolling system.

The General Assembly enacted the act of November 3, 2022 (P.L. 1734, No. 112), which amended the language contained in 75 Pa.C.S. § 6110.1(f) relating to "affirmative action" to incorporate the Commission's conversion to electronic toll collection. The 2022 amendments to 75 Pa.C.S. § 6110.1 were codified nearly a year and a half after the publication of the Commission's proposed rulemaking published at 51 Pa.B. 3347 (June 19, 2021) and the Independent Regulatory Review Commission's (IRRC) subsequent August 18, 2021, comments.

In response to comments received from IRRC, subsection (c) is added to § 601.13 in Annex A of this final-form rulemaking, which lists the actions that constitute "affirmative action" for fare evasion or attempted fare evasion with reference to 75 Pa.C.S. § 6110.1(f). Accordingly, the Commission deletes previously proposed language in § 601.13(b)(2.1) and (3.1) because similar language appears in 75 Pa.C.S. § 6110.1(f) which is now included in the § 601.13(c). Specifically, the proposed language in § 601.13(b)(2.1) now appears in § 601.13(c)(6) of this final-form rulemaking, and the proposed language in § 601.13(b)(3.1) now appears in § 601.13(c)(1). Moreover, to remain consistent, the Commission deletes the existing language in § 601.13(b)(1) because similar language exists in 75 Pa.C.S. § 6110.1(f)(5), which is added to this final-form rulemaking as § 601.13(c)(5).

As suggested by IRRC, the changes discussed previously to § 601.13 in Annex A of this final-form rulemaking help bring clarity to the Commission's fare evasion regulation. The changes are not substantive and will incorporate the 2022 amendments already made by the General Assembly to 75 Pa.C.S. § 6110.1(f).

§ 601.14. Over-dimensional/overweight vehicles

As stated previously, the definition of a "Class 9 vehicle" found in § 601.1 is amended to an "over-dimensional/overweight vehicle." Accordingly, this section is renamed and amended to reflect the Commission's revised policies and procedures for issuing special hauling permits for over-dimensional/overweight vehicles. To foster uniformity within the trucking/hauling industry, and consistency with other entities using a similar permitting process, such as PennDOT and the Ohio Turnpike Commission, the Commission will now charge a separate fee for a special hauling permit in addition to regular toll rates. First, operators of over-dimensional/overweight vehicles must apply for a special hauling permit and pay a $37 flat fee along with an additional 24 cent-per-ton-mile fee on all weight in excess of 80,000 pounds (if applicable). Second, all appropriate tolls are assessed according to the vehicle classification system in place and then paid in lane by E-ZPass or Toll By Plate at the time of travel.

As part of its conversion to AET, the Commission's long-standing Class 9 toll rate is updated for use with the revised permitting process that includes a new toll rate which is now equal to the significantly lower Class 8 toll rate. The former Class 9 toll was always higher than other tolling rates because of the need for the Commission to affect repairs to the Turnpike System from damage done by over-dimensional/overweight vehicles. The pre-AET Class 9 rate had these costs built into the toll rate and represented the cost for carriers to travel on the Turnpike System, in effect a user fee. However, due to the revised toll rates under AET, the revised permitting system will result in revenue/cost neutrality for the Commission and the carriers and customers impacted by the new procedures. Moreover, the revised permitting system will not impose new or restrictive conditions on said carriers or customers traveling on the Turnpike System.

The amendments to this section also revise the language regarding escorts for vehicles with excessive width, length, height or weight. As suggested in IRRC's comments, the Commission amends § 601.14(a) in this final-form rulemaking to include the Commission's web site to direct and alert customers on how to request and obtain a special hauling permit.

§ 601.15. Vehicles excluded from the Turnpike

To be consistent with the amendments to § 601.14, this section is amended to replace the term "Class 9 vehicle" with "over-dimensional/overweight vehicle" and the requirement to obtain a special hauling permit before these vehicles can travel on the Turnpike System. This section is also amended to prohibit certain vehicles on the Turnpike System during adverse travel conditions. Weather-related exclusions are already permitted under § 601.15(a) (relating to vehicles excluded from the Turnpike). The Commission's intent is to exclude certain vehicles, as already listed in § 601.15(a), from the Turnpike System for non-weather-related travel conditions as determined by the Commission. For example, closure of a bridge due to structural damages, such as the Delaware Bridge in 2017 or a truck fire in a tunnel.

§ 601.17. Authorized vehicle

The amendments to this section clarify existing language or are editorial.

§ 601.18. Accident prevention investigations

The amendment to this section is editorial.

§ 601.101. Length limit for tandems

To be consistent with the amendments to § 601.14, this section is amended to replace the term "Class 9 vehicle" with "over-dimensional/overweight vehicle" and the requirement to obtain a special hauling permit regarding tandem combinations exceeding 85 feet in length.

§ 601.102. Weight and dimensional limits for tandems

To be consistent with the amendments to § 601.14, this section is amended to replace the term "Class 9 vehicle" with "over-dimensional/overweight vehicle" and the requirement to obtain a special hauling permit regarding tandem combinations. The Commission deletes the sentence "[t]he maximum gross weight that may be carried upon any one axle may not exceed 22,400 pounds" because it is redundant and could be confusing to carriers when read in conjunction with the newly defined "over-dimensional/overweight vehicle." Likewise, obsolete language regarding excessive maximum gross axle weight and upgrading to the next higher vehicle classification is also deleted.

§ 601.103. Exclusion of tandem truck trailers

This section is amended to update the proper citation for the definition of "hazardous materials, substances or wastes" as found in 49 CFR Chapter I (relating to pipeline and hazardous materials safety administration, Department of Transportation).

D. *Response to Comments and Summary of Changes*

The Commission received no public comments from the regulated community or the general public during the public comment period, which closed on July 19, 2021. On August 18, 2021, the Commission received comments to

its proposed rulemaking from IRRC. The Commission's responses to IRRC's comments are set forth as follows with explanation of any changes made to the proposed rulemaking:

1. *Compliance with the provisions of the RRA or the regulations of IRRC in promulgating the regulation; Possible conflict with statutes and regulations.*

IRRC asked the Commission to identify how many of the approximately 800 registered vendors/businesses with former "Class 9" accounts as reported in the Regulatory Analysis Form (RAF) for 2018-2019 would be considered small businesses, and if so, how many. The Commission has no identifiable method for answering IRRC's question because it does not collect this data or records and does not ask whether a customer applying for a permit is operating as a small business. In the past, including 2018-2019, the Commission has not requested or required personal information from former "Class 9" permit applicants including financial information, business practices, proof of business level (specifically, whether the permit applicant is a business or small business), or other related information. In short, the Commission would have no way of knowing whether a customer applying for a permit is a small business. The Commission does not request this information now with its special hauling permits and accounts and it is not a requirement of this final-form rulemaking. Requesting the business status or classification of a customer applying for a permit could be interpreted as discriminatory in nature. Moreover, the Commission does not require this information to set up an account or process an application for a permit.

In its answers to RAF # 15 and # 17, the Commission explained that all customers operating an over-dimensional/overweight vehicle on the Turnpike System shall be required to comply with this final-form rulemaking and register and obtain a special hauling permit, formally referred to as a "Class 9" permit. Accordingly, the requirements for a special hauling permit are applied equally to any person, business, small business or an organization, as were the former "Class 9" permits in 2018-2019. As detailed by the Commission's answers in RAF # 15, # 17, # 24 and # 27, there is no significant financial/economic or adverse impact to small business, or any permit applicant, because the final-form regulations are revenue/cost neutral when compared to the previous regulations. These final-form regulations amend and revise procedures that already exist and have been in place with the Commission for decades. Moreover, the revised regulations for registering and obtaining a special hauling permit—which all applicants were already required to comply with—will not impose new or restrictive conditions on customers traveling on the Turnpike System (including small businesses).

IRRC asked the Commission to explain how its fiscal impact statement is consistent with section 612 of The Administrative Code of 1929 (71 P.S. § 232), its accompanying regulations at 4 Pa. Code §§ 7.231—7.234 (relating to fiscal notes) and the Regulatory Review Act (71 P.S. §§ 745.1—745.14). In November 2021, the Commission contacted the Chief Counsel for the Office of the Budget (OB) seeking confirmation on whether the Commission is required to submit a fiscal note for its proposed rulemaking. The OB discussed the issue internally and decided that the OB would not produce a fiscal note for the Commission's proposed rulemaking. The OB reasoned that because the Commission does not receive funds from the State Treasury, and operates almost exclusively out of its own funding, the Commission does not fall within section 612 of The Administrative Code of 1929. Accordingly, the Commission's fiscal note comment at the conclusion of its preamble in the proposed rulemaking is accurate and remains as stated.

In response to IRRC's comment regarding the consistency of the fiscal impact statement, the Commission updates its response in the preamble included with this final-form rulemaking.

2. *Section 601.13. Evasion of fare.—Clarity; and Possible conflict with or duplication of statutes or existing regulations.*

IRRC provided several comments regarding the Commission's amendments to § 601.13. Evasion of fare, including a suggestion that the Commission insert into the regulation the actions that constitute "affirmative action" as listed in 75 Pa.C.S. § 6110.1(f). IRRC requested that the Commission define "Electronic toll collection device" and explain what makes this device valid. IRRC also asked the Commission to clarify the intent of certain conditions that must be present to be considered as fare evasion and to correct certain non-regulatory language.

The General Assembly enacted the act of November 3, 2022 (P.L. 1734, No. 112), which amended the language contained in 75 Pa.C.S. § 6110.1(f) relating to "affirmative action" to incorporate the Commission's conversion to electronic toll collection. The 2022 amendments to 75 Pa.C.S. § 6110.1 were codified after the publication of the Commission's proposed rulemaking published at 51 Pa.B. 3347 and IRRC's subsequent August 18, 2021, comments.

To reflect the amendments to 75 Pa.C.S. § 6110.1(f) as codified by the General Assembly, and to address IRRC's comments, the Commission amends the language of § 601.13 in this final-form rulemaking. The Commission deletes, rearranges and adds additional language into § 601.13. As suggested by IRRC for purposes of clarity, subsection (c) is added, which lists the actions that constitute "affirmative action," with reference to 75 Pa.C.S. § 6110.1(f). With the addition of what constitutes "affirmative action," the Commission deletes the proposed language in § 601.13(b)(2.1) and (3.1) previously submitted with the proposed rulemaking published at 51 Pa.B. 3347 and also deletes the existing language in § 601.13(b)(1). The inclusion of similar language, from the amendment of 75 Pa.C.S. § 6110.1(f), is now contained in § 601.13(c) that addresses toll evasion in an electronic toll collection environment. As a result, the proposed language in § 601.13(b)(2.1) and (3.1), and the existing language in § 601.13(b)(1), is redundant. Further details regarding these amendments are previously explained in Section C of this preamble.

The amended language in Annex A also includes reference to the definition of "electronic toll collection device" in 74 Pa.C.S. § 8102, as amended. This is a new definition in 74 Pa.C.S. § 8102 that was also added by the General Assembly to 75 Pa.C.S. § 6110.1(f) in the 2022 amendments and did not exist at the time that IRRC submitted its comments. The Commission prefers to reference the definition of "electronic toll collection device" in 74 Pa.C.S. § 8102, instead of adding and repeating the same definition to this final-form rulemaking (as is common practice in rulemaking). The term "valid" electronic toll collection device, as it now appears in § 601.13(c), is used in the same context as the General Assembly's 2022 amendments to 75 Pa.C.S. § 6110.1(f). "Valid" in its common usage meaning legally or officially acceptable.

IRRC's remaining comments regarding the proposed language in § 601.13(b)(2.1) and (3.1) are resolved with

inclusion of what constitutes "affirmative action" into § 601.13(c) in this final-form rulemaking. The language previously proposed in § 601.13(b)(2.1) is deleted and similar language from the amendments to 75 Pa.C.S. § 6110.1(f)(6) now appears in § 601.13(c)(6). The nonregulatory language "and/or" is deleted.

Likewise, the previously proposed language in § 601.13(b)(3.1) is deleted and similar language from the amendments to 75 Pa.C.S. § 6110.1(f)(1) now appears in § 601.13(c)(1). IRRC asked if the Commission's intent is that both conditions, that is, operating a vehicle without a license plate and valid vehicle registration, must be present to be considered an attempted evasion of fare. The answer is yes, and this same language also appears in the amendments to 75 Pa.C.S. § 6110.1(f)(1).

As explained in detail previously, the Commission updates the relevant sections in this final-form rulemaking (in both the preamble and Annex A) to reflect the recommended changes and address IRRC's comments.

3. *Section 601.14. Over-dimensional/overweight vehicles—Clarity.*

As part of its comments, IRRC asked the Commission to explain why the additional requirements pertaining to special hauling permits found on the Commission's web site—such as polices for escort vehicles and engineering approvals—are not part of the amended regulations. The Commission desires to maintain the specific policies and procedures for special hauling permits on its web site to facilitate easier changes and updates as required. Therefore, this final-form rulemaking will remain general as to the permit requirements. However, the Commission agrees with IRRC's suggestion to include a reference in Annex A to the Commission's web site to alert customers on how to request and obtain a special hauling permit. Accordingly, the Commission amends § 601.14(a) in this final-form rulemaking to include its web site.

4. *Miscellaneous.*

The Commission agrees with IRRC's comment that the language contained in § 601.13(b)(6) should be consistent with the statutory definition of "electronic toll collection." Accordingly, § 601.13(b)(6) is amended in this final-form rulemaking to reflect IRRC's recommendation and the term "appropriate" has been replaced with "prescribed."

E. *Persons and Entities Affected*

This final-form rulemaking is intended to update and amend the Commission's current regulations. As before, all customers of the Commission (whether a person, business, small business or an organization) that travel on the Turnpike System will be affected by and required to comply with this final-form rulemaking.

F. *Fiscal Impact*

The Commonwealth and local governments will not experience increased costs or savings as a result of this final-form rulemaking. Moreover, as explained in depth in the RAF, the final-form regulations are expected to be cost neutral and should not impose significant, new fiscal impacts to the regulated community. Customers who travel on the Turnpike System shall be required to comply with this final-form rulemaking and the amendments are consistent with current practices that have been in place for decades. No adverse impacts on small businesses are anticipated because this final-form rulemaking amends and revises the previous regulations that apply to all customers who travel on the Turnpike System including all businesses (small or large). Also, no new legal, accounting or consulting procedures are required because of this final-form rulemaking.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 1, 2021, the Commission submitted a copy of the proposed regulations, published at 51 Pa.B. 3347, to IRRC and to the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act the Commission is required to submit to IRRC and the House and Senate Transportation Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Commission considered all comments received from IRRC. No public comments were received. The Commission also received no comments from the House and Senate Transportation Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5(j.2)), on September 20, 2023, this final-form rulemaking was deemed approved by the House and Senate Transportation Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 21, 2023, and approved this final-form rulemaking.

H. *Effective Date*

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

I. *Sunset Provisions*

The Commission has not established a sunset date for this final-form rulemaking because the traffic regulations are in effect on a continual basis. The Commission will continue to monitor these regulations for their effectiveness and propose amendments as necessary.

J. *Contact Person*

The contact person for questions about this final-form rulemaking is John F. Dwyer, Assistant Counsel, Pennsylvania Turnpike Commission, P.O. Box 67676, Harrisburg, PA 17106-7676, (717) 831-7343 or jdwyer@paturnpike.com.

K. *Findings*

The Commission finds that:

(1) Public notice of the amendments to the regulations 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 at 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. No public comments were received.

(3) These amendments to the regulations of the Commission are necessary and appropriate for the continued administration and enforcement of the traffic regulations that promote the health, safety and welfare of the Commission's customers traveling on the Turnpike System.

L. *Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 67 Pa. Code Chapter 601, are amended by amending §§ 601.1, 601.3, 601.5, 601.9, 601.12—601.15, 601.17, 601.18 and

601.101—601.103 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Commission shall submit this final-form rulemaking to IRRC and the House and Senate Transportation Committees as required by law.

(d) The Commission 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*.

MARK P. COMPTON,
Chief Executive Officer

(*Editor's Note*: See 53 Pa.B. 6319 (October 7, 2023) for IRRC's approval.)

Fiscal Note: The Commission is funded primarily by bonds and tolls. Because there is no direct cost to the Commonwealth as a result of these proposed amendments, the Commission has not submitted a fiscal note.

Annex A

TITLE 67. TRANSPORTATION

PART II. TURNPIKE COMMISSION

CHAPTER 601. TRAFFIC REGULATIONS

GENERAL

§ 601.1. Definitions.

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

Acceleration lane—A speed change lane for the purpose of:

(i) Enabling a vehicle entering a roadway to increase its speed to a rate at which it can safely merge with through traffic.

(ii) Providing the necessary merging distance.

(iii) Giving the main roadway traffic the necessary time and distance to make appropriate adjustments.

Commission—The Pennsylvania Turnpike Commission.

Deceleration lane—The portion of the roadway adjoining the traveled way constructed for the purpose of enabling a vehicle that is exiting a roadway to slow to a safe speed after it has left the mainstream of traffic.

Hazardous material—An explosive, blasting agent, flammable liquid, combustible liquid, flammable solid, flammable and nonflammable compressed gas, corrosive material, poison, poison gas, irritant, oxidizer, organic peroxide, radioactive material, etiologic agent or other regulated material defined in 49 CFR Chapter I (relating to pipeline and hazardous materials safety administration, Department of Transportation) whether a material, a substance or a waste product.

Over-dimensional/overweight vehicle—A vehicle or combination of vehicles, including the load carried thereon, which exceeds any one of the following: 100,000 pounds in maximum gross weight, 22,400 pounds maximum gross weight carried upon any one axle, 13 feet 6 inches in height, 10 feet in width, 85 feet in overall length, or which has a load or part thereof extending 5 feet or more beyond the front bumper or 15 feet or more beyond the rear bumper. The front and rear overhang of stinger steered vehicles, as defined in 23 CFR 658.13(e) (relating to length), may not be included in calculating the overall length of the stinger steered vehicle, as long as the front overhang does not exceed 3 feet and the rear overhang does not exceed 4 feet.

Recreational vehicle—A multipurpose passenger vehicle that provides living accommodations for persons or an apportionable vehicle designed or converted and used exclusively for personal pleasure or travel by an individual or the individual's family.

* * * * *

§ 601.3. Officers.

A driver of a motor vehicle and other persons using or traveling upon the Turnpike System shall obey the signs, signals and oral directions rendered by officers, employees, independent contractors or agents of the Commission, including the Pennsylvania State Police.

§ 601.5. Hazardous materials.

(a) Hazardous materials may be transported, under the required Federal permits, on the Turnpike System, if the shipments are in full compliance with 10 CFR Part 71 (relating to packaging and transportation of radioactive material), 49 CFR Chapter I, Subchapter C (relating to hazardous materials regulations), 49 CFR Parts 390—397, regarding Federal motor carrier safety regulations, and other Federal or State laws or regulations relating to the transportation of hazardous materials.

(b) A transporter of hazardous materials shall carry the required Federal permits while traveling on the Turnpike System and shall present the permits upon demand to any Commission employee or the Pennsylvania State Police.

(c) Explosives Divisions 1.1, 1.2, 1.3 and Radioactive materials as defined in 49 CFR 173.50 and 173.403, respectively (relating to Class 1—definitions; and definitions) are prohibited from being transported on the Turnpike System in tandem trailer combinations.

(d) The total volume of material in a tandem combination may not exceed the total volume that could be carried in a single trailer.

(e) The following materials are prohibited, prohibited in bulk packaging or permitted in Commission tunnels under the following chart. Bulk packaging is defined in 49 CFR 171.8 (relating to definitions and abbreviations).

Prohibited Hazardous Materials Classes		
Hazardous Material	*Class*	*Policy*
All Explosives	1.1—1.6	Prohibited
Poison Gas	2.3	Prohibited
Dangerous When Wet	4.3	Prohibited
Organic Peroxide	5.2	Prohibited
Poison (Inhalation Hazard)	6.1	Prohibited
Radioactive	7	Prohibited
Prohibited in Bulk Packaging Hazardous Materials Classes		
Hazardous Material	*Class*	*Policy*
Flammable Gas	2.1	Prohibited in bulk packaging
Flammable Liquid	3	Prohibited in bulk packaging

Prohibited Hazardous Materials Classes		
Hazardous Material	*Class*	*Policy*
Flammable Solid	4.1	Prohibited in bulk packaging
Spontaneously Combustible	4.2	Prohibited in bulk packaging
Oxidizer	5.1	Prohibited in bulk packaging
Poison (Other than Inhalation Hazard)	6	Prohibited in bulk packaging
Corrosive	8	Prohibited in bulk packaging
Permitted Hazardous Materials Classes		
Hazardous Material	*Class*	*Policy*
Non-Flammable Gas	2.2	Permitted
Combustible (Fuel Oil)	3	Permitted
Miscellaneous	9	Permitted
Dangerous	-	Permitted
Stow Away From Food Stuffs	-	Permitted

§ 601.9. U-turns.

The making of a U-turn on the Turnpike System is prohibited except by authorized vehicles. A driver of a motor vehicle may reverse direction of travel only by passing through an interchange or other tolling point. The Pennsylvania State Police may authorize a U-turn in an emergency and other personnel authorized by the Commission may authorize a U-turn when necessary.

§ 601.12. Toll collection.

Vehicles that travel on the Turnpike System, unless otherwise authorized, shall pay a toll through any of the following:

(1) Electronic toll collection, as defined in 74 Pa.C.S. § 8102 (relating to definitions).

(2) By license plate tolling with an invoice sent to the vehicle's registered owner, as authorized in 74 Pa.C.S. § 8116 (relating to collection and disposition of tolls and other revenue).

(3) Other technology which identifies a vehicle by photographic, electronic or other method, as authorized in 74 Pa.C.S. § 8116.

§ 601.13. Evasion of fare.

(a) Evasion of fare or attempted evasion of fare is prohibited and constitutes a summary offense unless a person intentionally or knowingly takes an affirmative action as defined in 75 Pa.C.S. § 6110.1(f) (relating to fare evasion) in an attempt to evade tolls, in which case the offense constitutes a misdemeanor of the third degree. Fines for evasion of fare, attempted evasion of fare and affirmative action are imposed by 75 Pa.C.S. § 6110.1(a) and (b).

(b) Evasion of fare or attempted evasion of fare includes the following:

(1) [Reserved].

(2) [Reserved].

(3) [Reserved].

(4) [Reserved].

(5) [Reserved].

(6) The failure by a person to pay the prescribed toll as indicated in § 601.12 (relating to toll collection).

(7) [Reserved].

(8) [Reserved].

(c) As used in this section, the term "affirmative action," as defined in 75 Pa.C.S. § 6110.1(f), includes:

(1) Operating a vehicle without a license plate and valid vehicle registration;

(2) Operating a vehicle without a valid electronic toll collection device, as defined in 74 Pa.C.S. § 8102 (relating to definitions), and installing a mechanism which rotates, changes, blocks or otherwise mechanically alters the ability of a license plate to be read by a toll collection system;

(3) Installing a device upon a vehicle which serves the sole purpose of masking, hiding or manipulating the true weight of the vehicle as it appears to a mechanical scale;

(4) Conspiring with an individual or group of individuals to alter, lower or evade payment of correct tolls;

(5) Unauthorized use of a Turnpike System private gate access or otherwise unauthorized movement entering or exiting the Turnpike System other than at approved tolling points; and

(6) Operating a vehicle without a valid electronic toll collection device and altering, obstructing, covering, distorting, manipulating or removing a license plate from a vehicle to impede electronic toll collection, as defined in 74 Pa.C.S. § 8102.

§ 601.14. Over-dimensional/overweight vehicles.

(a) Prior to entering the Turnpike System, operators of over-dimensional/overweight vehicles shall request and obtain a special hauling permit according to Commission policies and procedures and pay all applicable fees. The requester must apply online at the Commission's web site, www.paturnpike.com, which contains all of the current policies and procedures for obtaining a special hauling permit.

(b) The requester shall be prepared to provide the following information:

(1) The size, weight and number of axles of the over-dimensional/overweight vehicle.

(2) The name, address and telephone number of the carrier.

(3) The planned entry and exit interchange.

(4) The planned date of movement.

(5) Other information which may be requested by the Commission.

(c) If approved, the Commission will provide the requester with proof of a valid special hauling permit that the operator shall produce upon request from the Pennsylvania State Police or a Commission employee at any point during permitted travel on the Turnpike System.

(d) Based on Commission policies and procedures, operators of over-dimensional/overweight vehicles with excessive width, length, height or weight, or at the discretion of the Commission, may be required to provide an escort vehicle or have a Pennsylvania State Police escort, or both, for movement on the Turnpike System.

(e) Over-dimensional/overweight vehicles may travel on the Turnpike System only on days and at times designated by the Commission. The Commission will provide schedules and additional information according to policies and procedures.

(f) If the operator is unable to travel on the planned dates of movement, or the special hauling permit is cancelled, the requester shall notify the Commission according to policies and procedures.

§ 601.15. Vehicles excluded from the Turnpike.

(a) During adverse weather or travel conditions, recreational vehicles, motorcycles, vehicles towing trailers, tandem trailers, buses and over-dimensional/overweight vehicles may be excluded from parts or all of the Turnpike System. Vehicles may be excluded from the Turnpike System to effect proper snow removal or to remedy hazardous situations. Unsafe vehicles may be excluded at any time.

(b) Over-dimensional/overweight vehicles are prohibited from using the Turnpike System except by special hauling permit issued from the Commission, as indicated in §§ 601.1 and 601.14 (relating to definitions; and over-dimensional/overweight vehicles).

* * * * *

§ 601.17. Authorized vehicle.

(a) For the purposes of this chapter, the term "authorized vehicle" shall be defined as follows:

(1) A vehicle which carries the Commission seal, including automobiles and construction and maintenance vehicles.

(2) A vehicle owned by the Commission which does not carry the Turnpike seal.

(3) A vehicle driven by a Commission employee used in an official capacity and in the performance of employment.

(4) A vehicle of the Commission's Consulting Engineer utilized in the furtherance of the Consulting Engineer's duties, under the Trust Indenture.

(5) A vehicle of a consultant under contract with the Commission utilized in the furtherance of the consultant's duties under the Commission contract.

(6) A towing or wrecking vehicle which meets the following conditions:

(i) Through contract with the Commission as an authorized service provider and the vehicle displays that designation.

(ii) Is called by an authorized employee of the Commission or the Pennsylvania State Police to perform special clean-up or towing services.

(7) A construction vehicle owned, leased or operated by a company performing a construction contract for the Commission which is operating within the terms of the contract.

(8) A vehicle which has obtained prior permission from the Commission and is moving under the supervision of the Pennsylvania State Police in executing the otherwise restricted activity.

* * * * *

§ 601.18. Accident prevention investigations.

(a) The Commission may conduct in-depth accident investigations and safety studies of the human, vehicle and environmental aspects of traffic accidents for the purpose of determining the cause of traffic accidents and the improvements which may help prevent similar types of accidents or increase the overall safety of the Turnpike roadway and bridges.

(b) In-depth accident investigations and safety studies and information, records and reports used in their preparation are not discoverable or admissible as evidence in any civil action or proceeding. Officers or employees or the agencies charged with the development, procurement or custody of in-depth accident investigations and safety study records and reports are not required to give depositions or evidence pertaining to anything contained in the in-depth accident investigations or safety study records or reports in any civil action or other proceeding.

TANDEM TRAILER COMBINATIONS

§ 601.101. Length limit for tandems.

A semitrailer, or the trailer of a tandem trailer combination, may not be longer than 28 1/2 feet. A tandem combination—including the truck tractor, semitrailer and trailer—which exceeds 85 feet in length is considered an over-dimensional/overweight vehicle which requires a special hauling permit to travel on the Turnpike System.

§ 601.102. Weight and dimensional limits for tandems.

A tandem trailer combination which is considered an over-dimensional/overweight vehicle shall require a special hauling permit to travel on the Turnpike System. In tandem combinations, the heaviest trailer shall be towed next to the truck tractor.

§ 601.103. Exclusion of tandem tank trailers.

Tandem tank trailer combinations transporting hazardous materials, substances or wastes, as defined in 49 CFR Chapter I (relating to pipeline and hazardous materials safety administration, Department of Transportation) are prohibited from using the Turnpike System.

[Pa.B. Doc. No. 23-1677. Filed for public inspection December 1, 2023, 9:00 a.m.]

PROPOSED RULEMAKING

STATE BOARD OF PODIATRY

[49 PA. CODE CH. 29]

Child Abuse Reporting Requirements

The State Board of Podiatry (Board) proposes to amend §§ 29.52, 29.55, 29.61, 29.91—29.97, and add §§ 29.98 and 29.99 (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 proposed rulemaking will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 15 of the Podiatry Practice Act (63 P.S. § 42.15) sets forth the Board's general rulemaking authority. Under 23 Pa.C.S. Chapter 63 (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, there have been numerous amendments made 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, and were implemented as of that date. These proposed amendments are required to update the Board's existing regulations on the subject of child abuse reporting to comport to the numerous amendments made to the CPSL, and to incorporate the mandatory training requirements as set forth in section 6383(b)(3)(i) and (ii).

Description of the Proposed Amendments

The Board proposes to amend § 29.52 (relating to requirements for applicants) by placing the existing language pertaining to professional liability insurance requirements in subsection (a) and reorganizing that subsection. Next, the Board proposes adding subsection (b) which would incorporate the mandatory child abuse recognition and reporting training requirements. The Board is also proposing to amend § 29.55 (relating to volunteer license) to incorporate the mandatory training requirements for applicants for a volunteer license in subsection (c) and for biennial renewal of a volunteer license in subsection (e). The Board is also taking this opportunity to replace the outdated reference to the repealed Health Care Services Malpractice Act with its successor—the Medical Care Availability and Reduction of Error (MCARE) Act in subsection (e)(2).

The Board is also proposing to amend § 29.61 (relating to requirements for biennial renewal and eligibility to conduct educational conferences) to incorporate the requirement that podiatrists seeking to renew a license shall complete at least 2 hours of approved courses in child abuse recognition and reporting as required under section 6383(b)(3)(ii) of the CPSL.

The Board proposes comprehensive amendments to the Board's existing child abuse reporting requirements to comport to the amendments to the CPSL. Initially, the Board proposes amendments to § 29.91 (relating to definitions relating to child abuse reporting requirements) to update the definitions of terms used in the CPSL. Specifically, the Board finds it necessary to define the terms "bodily injury," "child," "parent," "program, activity or service" and "serious physical neglect" and to amend the definitions of "child abuse," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions" and "sexual abuse or exploitation" to comport with amendments made to the CPSL. The Board has also added a definition for the terms "Bureau" and "mandated reporter" for ease of reference. The Board is also proposing to delete definitions for "individual residing in the same home as the child" and "serious physical injury" because these terms have been deleted from the CPSL. Additionally, the Board proposes to amend, where necessary throughout the proposal, the name of the Department of Public Welfare, as the name of that agency has changed to the Department of Human Services.

The Board is proposing to amend § 29.92 (relating to suspected child abuse—mandated reporting requirements) to provide the general rule that all licensed podiatrists are considered mandated reporters, and to update the mandated reporting requirements and reporting procedures as set forth in sections 6311 and 6313 of the CPSL (relating to persons required to report suspected child abuse; and reporting procedure), as amended. The Department of Human Services has implemented an electronic reporting process for mandated reporters, and the Board finds it necessary to propose amendments to § 29.93 (relating to photographs, medical tests and X-rays of child subject to report) to set forth the requirement to submit documentation relating to photographs, medical tests and X-rays to the county children and youth social service agency within 48 hours of making an electronic report in accordance with section 6314 of the CPSL (relating to photographs, medical tests and X-rays of child subject to report), and to include the requirement that medical summaries or reports of the photographs, X-rays and relevant medical tests be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6340(a)(9) or (10) (relating to release of information in confidential reports).

The Board is proposing to amend § 29.94 (relating to suspected death as a result of child abuse—mandated reporting requirement) to incorporate an amendment made to section 6317 of the CPSL (relating to mandatory reporting and postmortem investigation of deaths) to permit a report to be made to the medical examiner of the county where the death occurred, or of the county where the injuries were sustained. Further, the Board is proposing to amend and restructure § 29.95 (relating to immunity from liability) to incorporate amendments made to section 6318 of the CPSL in subsection (a) and to clarify in subsection (b) that the Board will uphold the same good faith presumption in any disciplinary proceedings that may be brought for violations of the duties imposed upon licensees that are set forth in §§ 29.92—29.94. The Board also proposes to amend § 29.96 (relating to confidentiality—waived) to incorporate the provisions of section 6311.1 of the CPSL (relating to privileged communi-

cations). Likewise, the Board proposes to amend § 29.97 (relating to noncompliance) to update the criminal penalties for failure to make a report or referral required by the CPSL, which have been increased in recent years from a summary offense for a first violation and a misdemeanor for a second or subsequent violation, to a misdemeanor of the second degree to most offenses, except under certain enumerated circumstances where the offense is graded as a felony.

The Board proposes to add two sections to incorporate the mandatory training requirements set forth in section 6383(b)(3)(i) and (ii) of the CPSL. Section 29.98 would set forth the requirements that all individuals applying to the Board for an initial license are required to complete at least 3 hours of training in child abuse recognition and reporting which has been approved by the Department of Human Services; and that all licensees seeking renewal are required to complete at least 2 hours of continuing education in approved courses in child abuse recognition and reporting as a requirement of renewal. The Board would also provide notice that these 2 hours of training would be accepted as a portion of the total continuing education hours required for biennial renewal, and not an additional requirement, as provided in section 6383(b)(3)(ii) of the CPSL. The Board is also clarifying that a license will not be issued or renewed unless the Bureau of Professional and Occupational Affairs (Bureau) has received an electronic report from an approved course provider documenting the attendance or participation by the applicant or licensee in an approved course or the individual has been granted an exemption under subsection (c). The proposal would also clarify that for purposes of renewal, the course must be completed within the applicable biennial renewal period, and that if a licensee holds a license from 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.

Subsection (c) would include the process for applying for an exemption from the mandatory training requirements as set forth in section 6383(b)(4) and (6) of the CPSL, for individuals who have already completed similar training or who otherwise should be exempt from the training requirements. Specifically, paragraph (1) provides an exemption for individuals who have already completed comparable training required under section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6). Paragraph (2) would provide an exemption for individuals who have completed comparable training under section 6383(c) of the CPSL. The Board notes that section 6383(b)(4)(ii)(B) of the CPSL provides an exemption for individuals who have already completed child abuse recognition training required by the Human Services Code (formerly known as the Public Welfare Code), and the training was approved by the Department of Human Services. However, the Department of Human Services has confirmed that there is no provision in the Human Services Code that requires this training. Instead, section 6383(c) of the CPSL sets forth the requirement that certain individuals and entities regulated by the Department of Human Services complete mandated reporter training. Therefore, the Board believes it is appropriate to include an exemption for a licensee who has already completed comparable training in child abuse recognition and reporting required by the Department of Human Services under section 6383(c) of the CPSL. For example, if a podiatrist happened to be a foster parent and, therefore, was required to complete the training under section 6383(c) of the CPSL, there would be no need to repeat the training as a condition of licensure or license renewal under section 6383(b) of the CPSL. In addition, section 6383(b)(6) of the CPSL permits the Board to exempt a licensee from the training requirement if the licensee "submits documentation acceptable to the licensing board that the licensee should not be subject to the training or continuing education requirement." The Board believes that this section also provides authority to the Board to determine that those licensees who are required to complete comparable training under section 6383(c) of the CPSL should be exempt from the training requirement under section 6383(b) of the CPSL, provided they submit acceptable documentation to the Board evidencing completion of comparable training.

The Board is also proposing to further implement section 6383(b)(6) of the CPSL by providing, in paragraph (3), an exemption for an individual who submits acceptable documentation demonstrating why they should not be subject to the training or continuing education requirement. The Board also proposes to clarify the standards for granting an exemption under paragraph (3) by explaining that the Board will not grant an exemption based solely upon proof that children are not a part of the applicant's or licensee's practice and that each request for an exemption 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.

Subsection (d) will clarify that exemptions which are granted under subsection (c) are applicable only to the biennial renewal period in which the exemption is requested. Subsection (d) will also set forth the process for notifying an applicant or licensee of the Board's decision to grant or deny the exemption.

Finally, the Board proposes to add § 29.99 to set forth the administrative process developed by the Bureau in conjunction with the Department of Human Services, for individuals, entities and organizations to apply for approval to deliver the mandatory training in child abuse recognition and reporting. Subsection (a) requires an individual, entity or organization to apply simultaneously to the Bureau and the Department of Human Services. Subsection (b) sets forth the required course materials to be submitted. In addition to the materials relating to the content of the training itself for review by the Department of Human Services, the Bureau has established a requirement that to be approved to provide the mandatory training in child abuse recognition and reporting, an individual, entity or organization must be able to report participation or attendance electronically to the Bureau. In this manner, the completion of the training is automatically imported into the applicant's or licensee's record with the Board at the time the course is completed. Then, at the time of application or renewal, the system verifies that the training was completed as required prior to issuing or renewing the license. Thus, the Board will not renew a license unless an electronic report has been received from an approved course provider or the licensee has received an exemption from the mandatory training requirement. Finally, subsection (c) clarifies that the Bureau will notify the individual, entity or organization in writing upon approval of the course and will post a list of approved courses on the Bureau's and the Board's web site.

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 November 13, 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 and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Counsel, State Board of Podiatry, P.O. Box 69523, Harrisburg, PA 17106-9523 or RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-4412 (Child Abuse Reporting Requirements).

ERIC B. GREENBERG, DPM, JD,
Chairperson

Fiscal Note: 16A-4412. 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 29. STATE BOARD OF PODIATRY

LICENSURE APPLICATIONS

§ 29.52. Requirements for applicants.

(a) ***Professional liability insurance requirements.*** Applicants for licensure or licensees applying for biennial renewal, who practice in this Commonwealth, shall **comply with the following:**

(1) Applicants shall furnish satisfactory proof to the Board that they are complying with the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101—1303.910), in that the applicant or licensee, if required by the act and the rules and regulations pertaining thereto, is maintaining the required amount of professional liability insurance or an approved self-insurance plan, and has paid the required fees and surcharges.

[(b)] **(2)** Licensees practicing solely as Federal employees are not required to participate in the professional liability insurance program, nor are they required to comply with the MCARE Act.

[(c)] **(3)** Licensees practicing podiatry in this Commonwealth shall carry at least the minimum amount of professional liability insurance or an approved self-insurance plan as set forth in the MCARE Act. The licensee shall carry liability insurance or an approved self-insurance plan to cover all professional services performed by the licensee. Licensees who do not practice in this Commonwealth are not required to comply with the MCARE Act.

(b) *Mandatory child abuse recognition and reporting training requirements*. Applicants for licensure or licensees applying for biennial renewal shall comply with the requirements of § 29.98 (relating to child abuse recognition and reporting—mandatory training requirement).

§ 29.55. Volunteer license.

* * * * *

(c) *Applications.* An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide**, or cause to be provided**:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice exclusively as follows:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(3) Evidence that the applicant has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 29.98(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(d) *Validity of a license.* A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period, the volunteer license holder shall notify the Board of any change in clinic or volunteer status within 30 days of the date of a change, or at the time of renewal, whichever occurs first.

(e) *Renewal of license.* A volunteer license shall be renewed biennially on forms provided by the Board.

(1) As a condition of biennial renewal, the applicant shall satisfy the same continuing education requirements as the holder of an active, unrestricted license**, including**

at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 29.98(b).

(2) The applicant shall be exempt from § 29.13 (relating to fees) pertaining to the biennial renewal fee and shall be exempt from the requirements with regard to maintenance of liability insurance coverage under **[section 701 of the Health Care Services Malpractice Act (40 P.S. § 1301-701)] section 711 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.711)** and §§ 29.51—29.54.

(f) *Return to active practice.* A volunteer license holder who desires to return to active practice shall notify the Board and apply for biennial registration on forms provided by the Board in accordance with §§ 29.51 and 29.52 (relating to applicants; and requirements for applicants).

(g) *Disciplinary provisions.* A volunteer license holder shall be subject to the disciplinary provisions of the act and this chapter. Failure of the licensee to comply with the Volunteer Health Services Act (35 P.S. §§ 449.41—449.50) or this chapter may also constitute grounds for disciplinary action.

CONTINUING EDUCATION

§ 29.61. Requirements for biennial renewal and eligibility to conduct educational conferences.

(a) A licensee applying for biennial renewal of a license shall have completed 50 clock hours of continuing education in approved courses and programs during the preceding biennium, in accordance with the following:

(1) At least 30 of the clock hours must be in courses and programs in podiatry approved by the Board under § 29.64 (relating to applications for approval of educational conferences) or approved by the CPME.

(1.1) At least 2 of the clock hours must be completed in child abuse recognition and reporting in accordance with § 29.98(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(2) The remaining clock hours must be in courses and programs in medical subjects pertinent to the practice of podiatry approved by the American Medical Association, the American Osteopathic Association, the Board or the CPME, or offered by an accredited school or college of podiatric medicine.

(3) A maximum of 10 clock hours may be in approved courses and programs that involve the use of reading professional journals.

(4) Clock hours may be obtained by completing approved synchronous distance education or asynchronous distance education courses and programs. Approved asynchronous distance education courses or programs must include a skill or knowledge assessment component in addition to all other requirements.

(5) Continuing education credit will not be awarded for courses or programs in office management or marketing the practice.

(6) Excess clock hours may not be carried over to the next biennium.

(7) Continuing education courses completed in accordance with a disciplinary order of the Board may not be used to meet the biennial continuing education requirement.

(8) A licensee who wishes to use a course or program for continuing education credit toward licensure renewal is responsible for ensuring that a particular course or program is approved for continuing education credit prior to participating in the course or program.

(b) Providers approved by the Board are eligible to conduct educational conferences.

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CHILD ABUSE REPORTING REQUIREMENTS

§ 29.91. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 29.92—**[29.97] 29.99**, have the following meanings, unless the context clearly indicates otherwise:

***Bodily injury*—Impairment of physical condition or substantial pain.**

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

***Child*—An individual under 18 years of age.**

Child abuse—**[A term meaning any of the following:**

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.] 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 these 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), where 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 **[Public Welfare]** **Human Services** which operates a 24-hour a day Statewide **[toll free]** **toll-free** telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

[*Individual residing in the same home as the child*—An individual who is 14 years of age or older and who resides in the same home as the child.]

***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 podiatrists.**

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

Perpetrator—**[A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.]** **A person 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.

(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. **[The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.]**

***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 **[** ***acts or omissions*—Acts or omissions** **]** ***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 **[Public Welfare]** **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 injury*—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.]**

***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—**[The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.] 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.

§ 29.92. 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), **[podiatrists who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse]** **licensed podiatrists 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 in order for the mandated reporter to make a report of suspected child abuse.

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

(b) *Staff members of public or private agencies, institutions and facilities.* **[Podiatrists who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the podiatrist, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d)] Whenever a podiatrist 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, the podiatrist 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.* **[Reports of suspected child abuse shall be made by telephone and by written report.**

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.] 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 (relating 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.* **[Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available] A written or electronic report of suspected child abuse shall include the following information, if known**:

(1) The names and addresses of the child **[and],** the **child's** parents **[or] and any** other person responsible for the **[care of the child, if known] child's welfare**.

(2) Where the suspected **child** abuse occurred.

(3) The age and sex of **[the subjects] 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 **[siblings] any sibling** of the child.

(5) The name and relationship of **[the persons] each individual** responsible for causing the suspected abuse**[, if known,]** and any evidence of prior abuse by **[those persons] 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 **[and where that person can be reached]**.

(9) The actions taken by the **[reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner] person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317**.

(10) Other information which the Department of **[Public Welfare] Human Services** may require by regulation.

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

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

A podiatrist **who is required to report suspected child abuse** 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 § 29.92(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. § 6340(a)(9) or (10) (relating to release of information in confidential reports).**

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

A podiatrist 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.

§ 29.95. Immunity from liability.

(a) Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a podiatrist 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 **[the taking of photographs] 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 podiatrist's actions. For the purpose of any civil or criminal proceeding, the good faith of the podiatrist shall be presumed.

(b) The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a podiatrist's actions **[in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs] under §§ 29.92—29.94 (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)**.

§ 29.96. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 29.92—29.94 (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 of confidentiality in § 29.23 (relating to confidentiality) and any other ethical principle or professional standard that might otherwise apply to podiatrists. **In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient 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.**

§ 29.97. Noncompliance.

(a) *Disciplinary action.* A podiatrist who willfully fails to comply with the reporting requirements in §§ 29.92—29.94 (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 16 of the act (63 P.S. § 42.16).

(b) *Criminal penalties.* **[Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a podiatrist who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.] Under 23 Pa.C.S. § 6319 (relating to penalties), a podiatrist 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 the 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.

(*Editor's Note*: Sections 29.98 and 29.99 are proposed to be added and are printed in regular type to enhance readability.)

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

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license shall complete 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 § 29.99 (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 or 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 § 29.99. The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance or 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 also 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 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 subsection (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 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 subsection (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 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 a 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.

§ 29.99. 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 shall include all of the following:

(1) Contact information, including 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) 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 a 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 or participation, which shall include all of the following:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 hours 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 or attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the individual, entity or organization 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.

[Pa.B. Doc. No. 23-1678. Filed for public inspection December 1, 2023, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 58]

[L-2016-2557886]

Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1—58.18

Executive Summary

By Secretarial Letter dated December 16, 2016 (2016 Secretarial Letter), the Pennsylvania Public Utility Commission (PUC) sought stakeholder input on topics that are instrumental in determining the scope of a rulemaking to update the PUC's existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1—58.18.

Due to the advanced age of Pennsylvania's residential building stock, which is the second oldest in the nation, and the increasing need for affordable housing, LIURP is an essential program in reducing energy consumption for low-income households. However, much has changed in the marketplace since the LIURP regulations were first promulgated in 1987 and last revised in 1998.

Having reviewed the comments and reply comments to the 2016 Secretarial Letter, the PUC has now developed this Notice of Proposed Rulemaking (NOPR) to propose revisions to the existing LIURP regulations.

In 2016, we articulated the justification for reviewing the LIURP regulations, noting that it "is important for the PUC to update the LIURP regulations in order to keep pace with the changing energy landscape and technology improvements, to ensure proper coordination among Commonwealth energy reduction programs, and to ensure that these programs continue to meet the goals established." Nationally accepted benefit/cost models now measure results on a whole-job basis rather than a per-measure basis as was the case when the LIURP regulations were first promulgated. Further, the existing regulations have no work specifications, contractor certification requirements, or quality control standards.

Public Meeting held
May 18, 2023

Commissioners Present: Gladys Brown Dutrieuille, Chairperson; Stephen M. DeFrank, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss, statement follows; John F. Coleman, Jr.

Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1—58.18; L-2016-2557886

Notice of Proposed Rulemaking

By the Commission:

By Secretarial Letter dated December 16, 2016 (2016 Secretarial Letter), the Pennsylvania Public Utility Commission (PUC) sought stakeholder input on topics that are instrumental in determining the scope of a rulemaking to update the PUC's existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1—58.18. This Notice of Proposed Rulemaking (NOPR)[1] summarizes the stakeholder comments to the 2016 Secretarial Letter, proposes amendments to the existing LIURP regulations, and seeks comments on the proposed amendments.

History

The PUC's existing LIURP regulations apply to "covered" natural gas distribution companies (NGDCs) and "covered" electric distribution companies (EDCs).[2] These EDCs and NGDCs are required to include a low-income weatherization program in their universal service and energy conservation program (universal service) portfolios.[3] 2016 Secretarial Letter at 2.

The 2016 Secretarial Letter requested comments from interested stakeholders on updating the PUC's existing LIURP regulations and was published in the *Pennsylvania Bulletin* at 46 Pa.B. 8188 (12/31/2016). Parties were encouraged to include proposed regulatory language with their responses and replies. Comments were timely filed by Duquesne Light Company (Duquesne)[4]; Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively FirstEnergy)[5]; PECO Energy Company (PECO)[6]; PPL Electric Utilities Corporation (PPL)[7]; National Fuel Gas Distribution Corporation (NFG)[8]; Phila-

[1] This NOPR consists of a PUC Order which serves as the "preamble" under 1 Pa. Code § 301.1 (relating to definitions) and an Annex A containing the text of the proposed regulation under 1 Pa. Code § 305.1 (relating to delivery of a proposed regulation).

[2] See 52 Pa. Code § 58.2 (relating to definitions) for the existing definition of "covered utility." As noted below, the term "covered" would be changed to "public," and "public utility" would be defined based on the number of customers that an EDC or NGDC has. The EDCs and NGDCs that would be affected by this amendment are identified below. The terms "natural gas distribution utility or NGDU" and "electric distribution utility or EDU" are synonymous, respectively, with "NGDC" and "EDC."

[3] A "low-income customer" is one with household income at or below 150% of the Federal poverty income guidelines (FPIG). A public utility may spend up to 20% of its annual LIURP budget on customers having an arrearage and whose household income is at or below 200% of FPIG. See 52 Pa. Code §§ 58.1, 58.2, and 58.10 (relating to purpose; definitions; and program announcement).

[4] Duquesne is an EDC that served approximately 543,000 residential customers in the Commonwealth in 2021. 2021 Report on Universal Service and Collections Performance at 6.

[5] The four FirstEnergy public utilities providing jurisdictional electric distribution service in the Commonwealth are EDCs. Met-Ed served approximately 512,000 residential customers in the Commonwealth in 2021. Penelec served approximately 502,000 residential customers in the Commonwealth in 2021. Penn Power served approximately 148,000 residential customers in the Commonwealth in 2021. West Penn served approximately 632,000 residential customers in the Commonwealth in 2021. 2021 Report on Universal Service and Collections Performance at 6.

[6] PECO is an EDC that served approximately 1.5 million residential customers in 2021. 2021 Report on Universal Service and Collections Performance at 6.

[7] PPL is an EDC that served approximately 1.5 million residential customers in the Commonwealth in 2021. 2021 Report on Universal Service and Collections Performance at 6.

[8] NFG is an NGDC that served approximately 214,000 residential customers in 14 counties. 2021 Report on Universal Service and Collections Performance at 6.

delphia Gas Works (PGW)[9]; Energy Association of Pennsylvania (EAP)[10]; Office of Consumer Advocate (OCA); Department of Environmental Protection (DEP) and Department of Community and Economic Development (DCED) (collectively DEP & DCED); Commission on Economic Opportunity (CEO)[11]; PA Energy Efficiency For All Coalition (PA-EEFA)[12]; and PA Weatherization Providers Task Force (PWPTF)[13]. Reply comments (RC) were timely filed by Duquesne; PECO; PPL; Peoples Natural Gas LLC (PNGC) and Peoples Gas Company LLC (PGC) (collectively, Peoples)[14]; EAP; OCA; PA-EEPA; and CEO.

Background

The endeavors by the PUC and various stakeholders to formally address low-income policies, practices, and services began as early as 1984.[15] As a result, the public utilities began considering how to better address arrearages of low-income customers. 2016 Secretarial Letter at 1.

From 1988 through 2021, LIURPs have provided conservation services to more than 653,000 households.[16] Services may have included full weatherization conservation treatments, furnace repair and replacement, water heating measures and electric baseload measures. In our September 20, 1996 Order, at Docket No. L-00960118, we initiated a proposed rulemaking to extend the LIURP regulations that were scheduled to expire on or before January 28, 1998. In that order, we recognized that LIURP's weatherization, usage reduction, and conservation services had achieved significant benefits for both public utilities and low-income customers. 28 Pa.B. 25 (1/3/1998).

Due to the advanced age of Pennsylvania's residential building stock, which is the second oldest in the nation, and the increasing need for affordable housing, LIURP is an essential program in reducing energy consumption for low-income households. However, much has changed in the marketplace since the LIURP regulations were first promulgated in 1987 and last revised in 1998.[17] The PUC is interested in leveraging the knowledge and experience gained, to-date, by the public utilities, consumers, and other stakeholders to improve the operation of the various LIURPs and thereby maximize ratepayer benefits. 2016 Secretarial Letter at 1.

The four mandatory universal service programs are customer assistance programs (CAPs),[18] LIURPs, customer assistance referral and evaluation programs (CARES), and hardship fund programs.[19] 2016 Secretarial Letter at 2.

The purpose of the LIURP regulations is to require:

> [C]overed utilities to establish fair, effective and efficient energy usage reduction programs for their low income [sic] customers. The programs are intended to assist low income [sic] customers conserve energy and reduce residential energy bills. The reduction in energy bills should decrease the incidence and risk of customer payment delinquencies and the attendant utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs. The programs are also intended to reduce the residential demand for electricity and gas and the peak demand for electricity so as to reduce costs related to the purchase of fuel or of power and concomitantly reduce demand which could lead to the need to construct new generating capacity. The programs should also result in improved health, safety and comfort levels for program recipients.

2016 Secretarial Letter at 3-4.

LIURPs were initially subject to revision, stakeholder comment, and PUC review every three years as part of each public utility's on-the-record triennial universal service and energy conservation plan (USECP) review. The process leading up to PUC action relative to a USECP is overseen by the PUC's Bureau of Consumer Services (BCS) in docketed collaborative proceedings. This rulemaking would not change the process of BCS oversight of the review and approval process. Additionally, public utility universal service programs, including LIURPs, have been subject to independent third-party impact evaluations at least every six years.[20] On occasion, stakeholders have also proposed changes for consideration in a public utility's base rate proceeding, rider proceeding, demand side management filing, or other proceedings. 2016 Secretarial Letter at 2. Currently, the interval between USECP reviews has been extended to at least every five years, and deadlines for filing the third-party impact evaluations are established as part of the docketed USECP proceedings.[21] Public utilities may propose revisions to programs in an approved USECP for PUC consideration at any time between the periodic USECP reviews.

In January 2009, the Consumer Services Information System Project at The Pennsylvania State University (CSIS PSU), under contract with the PUC, published a long-term study on LIURP in the Commonwealth, including recommendations for policy changes.[22] To date, the PUC has taken no action on the CSIS PSU Report.

[9] PGW is an NGDC that served approximately 489,000 residential customers in the Commonwealth in 2021. 2021 Report on Universal Service and Collections Performance at 6.

[10] EDC members of EAP include: Citizens' Electric Company, Duquesne, Met-Ed, PECO, Penelec, Penn Power, Pike County Light & Power Company (Pike), PPL, UGI Utilities Inc. (UGI), Wellsboro Electric Company, and West Penn Power. NGDC members of EAP include: Columbia Gas of Pennsylvania, Inc., Pike, NFG, PECO, Peoples, PGW, UGI, and Valley Energy Inc.

[11] CEO is a non-profit organization serving low-income and elderly residents of Luzerne County. CEO has weatherized over 25,000 homes under DCED's Weatherization Assistance Program (WAP) and served as a subcontractor for PPL's and UGI's LIURPs and as the contracted operator of PPL's and UGI's CAPs. CEO Comments at 1.

[12] PA-EEFA is a partnership of Commonwealth and national organizations that share a goal of ensuring that low-income individuals have access to energy efficiency services to reduce their energy consumption. The partners include: Pennsylvania Utility Law Project (PULP); Natural Resources Defense Council (NRDC); National Housing Trust (NHT); Keystone Energy Efficiency Alliance (KEEA); Action Housing, Inc. (AHI); Housing Alliance of Pennsylvania (HAP); Regional Housing Legal Services (RHLS); and Community Legal Services of Philadelphia, Inc. (CLS). PA-EEFA Comments at 3.

[13] PWPTF is a network of 37 organizations providing energy conservation services throughout the Commonwealth. PWPTF entities administer various LIURPs and DCED Weatherization Assistance Programs. PWPTF Comments at 2.

[14] Peoples filed its joint comments in the names of three entities: Peoples Equitable Division, Peoples Natural Gas Company LLC, and Peoples TWP LLC. On August 10, 2017, at Docket No. R-2017-2618118, the PUC approved the request of Peoples TWP LLC to do business as PGC. On October 3, 2019, at Docket No. R?2018?3006818, et al., the PUC approved the merger of Peoples Natural Gas' separate Peoples and Equitable rate districts into a single rate district known as PNGC. PNGC and PGC are NGDCs that served approximately 593,089 and 58,000 residential customers in the Commonwealth in 2021, respectively. 2021 Report on Universal Service and Collections Performance at 6, 85.

[15] See, e.g., Recommendations for Dealing with Payment Troubled Customers, Docket No. M-840403. This docket is also indexed as "M-00840403" in some electronic databases.

[16] The LIURP regulations were originally codified as 52 Pa. Code §§ 69.151—69.168 (relating to residential low income usage reduction programs). See 15 Pa.B. 3650 (10/12/1985); 16 Pa.B. 1277 (4/14/1986); and 17 Pa.B. 3220 (8/1/1987). As of January 16, 1993, the LIURP regulations were codified at 52 Pa. Code §§ 58.1—58.18. See 23 Pa.B. 265 (1/13/1993). The Editor's Note at 23 Pa.B. 265, 274, explains that the "text of the regulations amended [by the annex at 23 Pa.B. 265, 274], was originally codified in Chapter 69 in error."

[17] The provisions in Chapter 58 were issued under §§ 501, 1501, and 1505(b) of the Public Utility Code, 66 Pa.C.S. §§ 501, 1501, and 1505(b). Chapter 58 became effective January 16, 1993. See 23 Pa.B. 265 (1/16/1993). Sections 58.2, 58.3, 58.8, and 58.10, were amended effective January 3, 1998. See 28 Pa.B. 25 (January 3, 1998).

[18] The CAP Policy Statement, 52 Pa. Code §§ 69.261—69.267, became effective July 25, 1992, was amended, effective May 8, 1999, and was further amended, effective March 21, 2020.

[19] See https://www.puc.pa.gov/media/1396/energy-assistance-programs2021.pdf. (accessed on March 7, 2023.)

[20] See 52 Pa. Code § 54.76 for EDCs and 52 Pa. Code § 62.5 for NGDCs.

[21] See Universal Service and Energy Conservation Plan Filing Schedule and Independent Evaluation Schedule, Docket No. M-2019-3012601 (order entered October 3, 2019).

[22] See Shingler, John. (2009). "Long Term Study of Pennsylvania's Low Income Usage Reduction Program: Results of Analyses and Discussion." Penn State University Consumer Services Information System Project. http://aese.psu.edu/research/centers/csis/publications (accessed on March 7, 2023).

This rulemaking docket was opened in 2016 to consider potential revisions to the existing LIURP regulations. Shortly thereafter in 2017, the PUC opened a docket to initiate a comprehensive review of the Universal Service and Energy Conservation model[23] and a docket to study energy affordability for low-income customers in Pennsylvania.[24] Subsequently, the PUC opened proceedings at Docket No. M-2019-3012599 to amend the CAP Policy Statement[25] and at Docket No. L-2019-3012600 to initiate a "comprehensive universal service rulemaking."[26] The PUC deferred its review of the stand-alone LIURP regulations pending completion of the CAP Policy Statement proceeding and the universal service rulemaking. While the CAP Policy Statement was revised, the universal service rulemaking proceeding is still pending. This notice of proposed rulemaking now resumes the PUC's review of the LIURP regulations.

In the interim, the PUC has worked with DCED on a state-wide weatherization initiative and inter-agency coordination effort regarding DCED's Weatherization Assistance Program (WAP) and LIURP. DCED and the PUC shared data and analyses of the two agencies' weatherization programs. This allowed for additional analysis in conjunction with the PUC's oversight of the EDCs' Act 129[27] energy efficiency and conservation program low-income measures. This also allowed CSIS PSU to compile data from these weatherization programs and perform analyses to inform the PUC. 2016 Secretarial Letter at 2-3. The work with DCED is continuing; a memorandum of understanding between the two agencies was renewed in 2022 for another five years.

Justification for Reviewing LIURP Regulations

In 2016, we articulated the justification for reviewing the LIURP regulations, noting that it "is important for the PUC to update the LIURP regulations in order to keep pace with the changing energy landscape and technology improvements, to ensure proper coordination among Commonwealth energy reduction programs, and to ensure that these programs continue to meet the goals established." Nationally accepted benefit/cost models now measure results on a whole-job basis rather than a per-measure basis as was the case when the LIURP regulations were first promulgated. Further, the existing regulations have no work specifications, contractor certification requirements, or quality control standards. 2016 Secretarial Letter at 3. We noted that it was "prudent and reasonable" to revisit the LIURP regulations to ensure that the regulations are fostering fair, effective, and efficient energy usage reduction programs. 2016 Secretarial Letter at 3. We articulated our interest in leveraging the knowledge and experience of the public utilities, consumers, advocates, and other stakeholders to identify improvements to the design of and the cost-effective operation of LIURPs, to maximize ratepayer benefits. 2016 Secretarial Letter at 3.

The rationale for reviewing the LIURP regulations remains valid. That process continues with this NOPR.

2016 Secretarial Letter

As part of the PUC's process of reviewing the existing LIURP regulations, and with the goal of ensuring effective and efficient use of ratepayer funds, the PUC posed, in its 2016 Secretarial Letter, the following Questions relative to revising the regulations:

1. Are the existing regulations meeting the charge in 52 Pa. Code § 58.1? If not, what changes should be made?

2. How should LIURPs be structured to maximize coordination with other weatherization programs such as DCED's WAP and Act 129 programs?

3. How can utilities ensure that they are reaching all demographics of the eligible populations in their service territories?

4. What design would better assist/encourage all low-income customers[11] to conserve energy to reduce their residential energy bills and decrease the incidence and risk of payment delinquencies? How does energy education play a role in behavior change?

5. How can the utilities to use their LIURPs to better address costs associated with uncollectible accounts expense, collection costs, and arrearage carrying costs?

6. How can LIURPs best provide for increased health, safety, and comfort levels for participants?

7. How can LIURPs maximize participation and avoid disqualifications of households due to factors such housing stock conditions?

8. What is the appropriate percentage of federal poverty income level to determine eligibility for LIURP?

9. With the additional energy burdens associated with warm weather, what, if any, changes are necessary to place a greater emphasis on cooling needs?

10. What are options to better serve renters, encourage landlord participation, and reach residents of multifamily housing?

11. Should the requirements regarding a needs assessment in developing LIURP budgets, as outlined at 52 Pa. Code § 58.4(c), be updated to provide a calculation methodology uniform across all utilities? If so, provide possible methodologies.

12. Should the interplay between CAPs and LIURPs be addressed within the context of LIURP regulations? If so, how?

13. Are there specific "best practices" that would better serve the LIURP objectives which should be standardized across all the utilities? If so, what are they? For example, is there a more optimal and cost-effective method(s) of procuring energy efficiency services so as to maximize energy savings at lower unit costs?

14. The [PUC] also welcomes stakeholder input on other LIURP issues or topics.

2016 Secretarial Letter at 4-5; (Footnote 11 in the original).

Parties were encouraged to submit proposed regulatory language with their responses and replies. 2016 Secretarial Letter at 5. The stakeholder responses to the Questions are addressed below in conjunction with the section of the regulations to which they relate. Questions

[23] Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907.

[24] Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711.

[25] 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261—69.267, Docket No. M-2019-3012599.

[26] See Universal Service Rulemaking, Docket No. L-2019-3012600 (order entered January 2, 2020), at 1.

[27] See 66 Pa.C.S. § 2806.1. Act 129, effective November 14, 2008, expanded, among other things, the PUC's oversight responsibilities and imposed new requirements on EDCs, with the overall goal of reducing energy consumption and demand.

[11] All income-qualifying, low-income customers are potentially eligible for LIURP, regardless of whether they participate in CAP programs.

13 and 14 are addressed separately as they did not relate to specific sections of the existing regulations.[28]

CAP and LIURP

CAP participation is not a requirement for LIURP eligibility. High usage, arrearages, and income parameters are the primary eligibility requirements for LIURP services. See 52 Pa. Code § 58.10 (relating to program announcement). LIURP conservation and efficiency efforts do not always result in lower energy bills or reduced usage for households receiving LIURP services. CAP asked-to-pay (ATP) amounts do not necessarily change as a result of a household receiving LIURP services. Individual LIURPs and CAPs help to reduce the costs of a public utility's uncollectible accounts, but the two programs are most effective when working in tandem. Further, when CAP participation is coupled with LIURP participation, the impact may lower a public utility's CAP shortfall[29] by reducing the differences between the actual cost of energy used and CAP ATP amounts.[30] 2016 Secretarial Letter at 5-6.[31]

Discussion

While the 2016 Secretarial Letter posed specific Questions, this proceeding is a review of the existing regulations and the proposed amendments to those regulations. We shall address each section of the existing regulations and proposed amendments, in turn, drawing upon the stakeholders' answers[32] to the Questions posed in the 2016 Secretarial Letter, as well as best practices identified in PUC reviews of USECPs over the years. We note that any issue raised in response to the 2016 Secretarial Letter that we may not have specifically delineated herein has been considered even though we have not incorporated it in the proposed Annex. Those exclusions have been made without prejudice, and such matters may be introduced by stakeholders in comments to this NOPR.

Section 58.1. Purpose.

This section of the existing regulations[33] sets forth the purpose and goals of public utility LIURPs. Stakeholder comments to Question Nos. 1 and 5 in the 2016 Secretarial Letter relate to this section.

Question 1: Are the existing regulations meeting the charge in 52 Pa. Code § 58.1? If not, what changes should be made?

Stakeholder Comments

FirstEnergy asserted that the existing LIURP regulations are following the purpose of § 58.1. It attributed the success of its LIURP[34] efforts to the flexibility permitted by the existing regulations. Consequently, FirstEnergy recommended that central components of a public utility's LIURP, including the specific LIURP measures, payback periods, and budgeting parameters, should continue to be derived within a public utility's USECP. FirstEnergy did not believe that a full overhaul of LIURP regulations was needed, but it recognized that certain strategies or small changes could modernize LIURP and improve the program for low-income customers. FirstEnergy Comments at 4-5. FirstEnergy recommended that the PUC draw a distinction between issues that are within the scope of a LIURP rulemaking and those that are LIURP policy or best practices. FirstEnergy maintained that due to differences among public utilities, the standardization of certain LIURP practices would fail to promote fair, effective, and efficient LIURP programs for all public utilities. FirstEnergy RC at 2.

Duquesne submitted that the existing regulations meet the charge in § 58.1. However, Duquesne suggested giving flexibility to public utilities to propose alternate ways to measure a program's success besides measuring energy savings. Duquesne Comments at 3-4.

EAP believed that the existing programs generally meet the charge in § 58.1 and the intent of the General Assembly. EAP Comments at 7. EAP stated that LIURP should remain a targeted program to lower bills for low-income households so fewer and smaller delinquencies occur resulting in a benefit for all residential ratepayers. EAP disagreed with broad expansion of programs or budgets as LIURP is not intended to be a "catch-all" solution for customers who struggle to pay bills or a remediation for housing stock deficiencies. EAP stated that public utilities are not the social agency of last resort. EAP RC at 3.

While identifying that there is always room for improvement, PECO agreed with EAP that the programs are meeting the charge in § 58.1 and intent of the General Assembly. PECO Comments at 5.

PPL believed that the existing regulations and its LIURP[35] support the regulations' objectives. PPL, however, acknowledged that there may be opportunities to increase LIURP effectiveness through revisions. PPL Comments at 2.

Peoples cautioned that any reworking of the existing LIURP regulations needs to continue to provide flexibility to public utilities to operate their LIURPs based on the unique needs of customers in their service territories. Peoples RC at 2.

According to PA-EEFA, the existing regulations only meet some of the expressed purposes. While PA-EEFA cited to LIURPs success in achieving energy savings, it used its responses to the other Questions to explore whether the existing regulations are successfully targeted to deliver energy efficiency measures that are most effective at reducing energy bills and whether the measures provided are evenly targeted and distributed. PA-EEFA Comments at 6-7.

OCA stated that the existing regulations should be modified to meet the charge in § 58.1. According to OCA, the LIURP regulations should rigorously consider the needs of customers in a public utility's service territory and more fully consider the impacts of LIURP measures outside of usage reduction, such as the costs of a public utility's CAP program and operation costs. OCA Comments at 23. OCA commented that the "overall objective should not stand in the way of allowing for some exceptions to the customers who are targeted for LIURP assistance." OCA pointed out that some customers reach their CAP credit maximums due to extremely low incomes or high usage. OCA RC at 4.

[28] Additional questions not related to the 2016 Secretarial Letter are posed herein as well.

[29] The CAP shortfall (also known as the CAP credit) is the difference between the actual tariff rate for jurisdictional residential energy service and the discounted amount that a CAP participant is expected/asked to pay for that service.

[30] The ATP amount for a CAP participant may only cover a portion of the tariff cost of energy that the customer uses. In some cases, the ATP is tied to usage; in other cases, it might be based on a percent of income or other formula not based solely on usage.

[31] For a discussion of LIURP in relation to universal service and energy conservation programs, see Re Guidelines for Universal Service and Energy Conservation Programs, 178 P.U.R. 4th 508 (July 11, 1997), which clarified the incorporation of the LIUPR regulations into universal service and energy conservation programs.

[32] The stakeholder answers are referred to herein as their comments and reply comments.

[33] The provisions of § 58.1 became effective January 16, 1993. The existing sections discussed below without specified effective dates also became effective January 16, 1993. See 23 Pa.B. 265 (January 16, 1993).

[34] FirstEnergy's LIURP program is called "WARM."

[35] PPL calls its LIURP program "Winter Relief Assistance Program (WRAP)."

PGW believed that changes are needed to better meet the charges of § 58.1. PGW contended that the regulations achieve conservation in low-income homes but fail to acknowledge the reality that customers in a Percent of Income Payment (PIP) CAP may not experience a reduction in energy bills. PGW Comments at 1-2.

Question 5: How can the public utilities use their LIURPs to better address costs associated with uncollectible accounts expense, collection costs, and arrearage carrying costs?

Stakeholder Comments

OCA suggested improvement in the coordination and information exchange between the public utility credit and collection processes/account managers and community-based organizations (CBOs). According to OCA, there should also be a non-public-utility-based contact regarding LIURP availability involved in the collection process, including the ability to use LIURP to address arrearage issues and disconnection threats. OCA Comments at 26-27. Duquesne agreed with OCA about LIURP availability and preventing arrears by reducing energy bills. Duquesne RC at 6.

PGW contended that the prioritization practices in § 58.10 should have the greatest impact on costs associated with uncollectible accounts, collection and arrearage. Additionally, PGW noted that further prioritization of the lowest-income customers within the highest usage population could have a positive impact by reducing the potential for high bills among the lowest income customers. PGW also noted the importance of managing program budget size as an increase in a program budget results in an additional cost burden for customers and thus increases the potential for customers to fall behind on their payments. PGW Comments at 7-8.

EAP asserted that LIURP is only one vehicle and that it works best with other support such as CAP to reduce customer arrearages and encourage good payment practices. EAP Comments at 10.

PECO asserted that the only way to use LIURP to reduce costs associated with uncollectible accounts, collection and arrearage is through the various methods described in its comments, and in the EAP comments, that target improving usage reduction. PECO Comments at 10.

Duquesne asserted that programs that can lead to usage reduction (such as LIURP and Watt Choices[36]) work best with other mechanisms or programs that assist customers with reducing arrearages and establishing good payment habits, such as budget billing or CAP. Duquesne Comments at 6. OCA agreed with Duquesne that LIURP works best when in tandem with other mechanisms or programs. OCA RC at 7-8.

PA-EEFA suggested that the PUC reconsider its decision not to address CAP issues, as it is critical for the PUC to address the fact that CAP energy burdens are too high to effectively mitigate utility-related economic hardship. PA-EEFA contended that by implementing some of the suggestions contained throughout their comments, such as making savings targets fuel-neutral, eliminating the fuel switching prohibition, and other changes to encourage more comprehensive energy savings, public utilities would realize deeper results in reducing arrears. PA-EEFA stated that the PUC should encourage the public utilities to implement in-person energy education for all household members in the residence at the time of measure installation and to provide follow-ups with the household if savings do not continue. PA-EEFA Comments at 16-17.

According to PPL, one method it employed involved training LIURP contractors to make referrals to PPL's CAP. PPL further recommended using LIURP funds to educate 1) "high usage" customers who are not eligible for LIURP, and 2) CAP customers with usage increases after LIURP treatment. PPL Comments at 5.

Proposed Revisions to Section 58.1.

We propose to retitle this section "Statement of Purpose" (currently "Purpose") for consistency with other regulations and to more accurately reflect the purpose and goals of a public utility LIURP. We also propose to revise the section to explain the purpose of LIURPs, consistent with the statement of purpose currently in § 58.1, with a proposed clarification to reflect that a LIURP may also provide service to a customer with household income between 151%—200% of the federal poverty income guideline level (FPIG) with special needs (i.e., special needs customer), who does not meet the definition of "low-income." This is consistent with existing provisions in several Commission-approved LIURPs. Further, throughout the regulation, when "low" and "income" are combined as an adjective, we propose to use the term "low-income" with a hyphen. The terms in this section would also be updated consistent with the proposed definitions in § 58.2, including replacing "program" with "LIURP" when appropriate.

Section 58.2. Definitions.

This section of the existing regulations[37] sets forth words and terms used in this chapter. There were no Questions in the 2016 Secretarial Letter relative to § 58.2.

Stakeholder Comments

PPL proposed revising the definition of "residential space heating customer" to define "primary heating source" as "a residence with a minimum of 50% installed electric or gas heat as provided by the covered utility." This was consistent with how PPL categorized customers with electric heat for CAP payments. PPL asserted that those with non-installed electric heat (e.g., portable space heaters) should not be categorized as "residential space heating customers." PPL Comments at 10.

FirstEnergy suggested that a working group evaluate the definition of a "residential space heating customer" to determine whether revisions would be appropriate based on current customer heating behaviors. FirstEnergy Comments at 12.

PA-EEFA disagreed with PPL's suggestion that the LIURP definition of residential space heating needs to be revised. PA-EEFA maintained that the definition should include portable space heaters. However, PA-EEFA agreed with PPL and FirstEnergy that a working group to address certain issues would be beneficial. PA-EEFA argued that LIURPs are obligated to address conditions as they exist and that any revised definition that fails to acknowledge de facto heating conditions will not meet the needs of LIURP constituents. PA-EEFA supported common sense, cost-effective solutions. PA-EEFA RC at 10-11.

PGW stated that the definition of "usage reduction education" should be broadened to allow for greater

[36] Duquesne's Watt Choices program helps customers conserve energy and reduce demand while lowering their electricity costs. https://www.duquesnelight.com/energy-money-savings/watt-choices (accessed on February 14, 2023).

[37] The provisions of § 58.2 were amended January 2, 1998, effective January 3, 1998. See 28 Pa.B. 25.

flexibility based on the public utility's program design and territories. PGW also recommended modifying the definition of "energy survey" to allow for future innovations by referring to it as an "analysis" rather than an "onsite inspection." PGW Comments at 6, 13.

Proposed Revisions to Section 58.2.

We propose to update the existing definitions in the LIURP regulations with current terminology, incorporate definitions used in 52 Pa. Code §§ 54.72, 56.2, 62.2, and 69.262,[38] and add definitions applicable to LIURP as a universal service program. While all the definitions are to be listed in one listing in one section of the LIURP regulations, our discussion herein addresses the proposed revisions in five groups according to the reasons for adding or changing a definition.

Because a public utility is required to administer a LIURP as one of its required universal service programs,[39] this first group of proposed definitions would be introduced in this regulation to reflect common universal service and low-income related programs and terms:

- *BCS—Bureau of Consumer Services*

Since the inception of LIURPs and USECPs, PUC approval of a public utility's universal service programs has been a process overseen by the PUC's BCS.[40]

- *CAP—Customer Assistance Program*

The proposed definition is consistent with the definition of "CAP" found in 52 Pa. Code §§ 54.72 and 62.2. We propose to identify a CAP as a universal service program that provides payment assistance and pre-program arrearage (PPA) forgiveness to low-income residential customers.

- *CAP shortfall*

This term would be defined for the first time in this regulation. The definition would explain that the CAP shortfall is the difference between the actual tariff rate for jurisdictional residential energy service and the amount charged on a CAP participant's bill. Because this term is used interchangeably with "CAP credit" by several public utilities in their universal service proceedings, we propose to indicate that "CAP credit" is a synonym even though we do not propose to use "CAP credit" in the LIURP regulations.

- *CARES—Customer Assistance and Referral Evaluation Services*

The proposed definition is consistent with the definition of "CARES" found in 52 Pa. Code §§ 54.72 and 62.2. We propose to identify CARES as a universal service program and to clarify that a CARES recipients may receive referrals to maximize their ability to pay utility bills.

- *CBO—Community-based organization*

The proposed definition is consistent with the definition of "community-based organization" as defined by the Federal government in 20 U.S.C. § 7801 (relating to definitions). It reflects that a CBO is a public or private nonprofit organization that is representative of a community or a significant segment of a community that works to meet community needs.

- *FPIG—Federal Poverty Income Guidelines*

The proposed definition is consistent with the definition of "Federal Poverty Level" found in 52 Pa. Code § 56.2. The Federal income guidelines are published at least annually in the Federal Register by the United States Department of Health and Human Services.

- *Hardship Fund*

The proposed definition is consistent with the definition of "Hardship Fund" found in 52 Pa. Code §§ 54.72 and 62.2. We propose to clarify that a Hardship Fund as a universal service program that provides cash assistance to help eligible customers pay public utility debt, restore public utility service, or stop a termination of public utility service.

- *LIHEAP—Low-Income Home Energy Assistance Program*

This proposed definition is consistent with the definition of "LIHEAP" found in 52 Pa. Code § 69.262 and with the way the Department of Human Services defines "LIHEAP."

- *LIURP budget, LIURP funding mechanism, and LIURP funds*

Definitions for these terms are added to conform to the usage distinctions being clarified in the revisions to § 58.4.

- *Payment-troubled customer*

The proposed definition is consistent with the definition of "payment troubled" found in 52 Pa. Code §§ 54.72 and 62.2, reflecting the inclusion of customers with an arrearage and customers who have failed to maintain one or more payment arrangements in a one-year.

- *USAC—Universal Service Advisory Committee*

The proposed definition is consistent with the definition of "USAC" found in 52 Pa. Code § 69.262, reflecting that participants in a USAC are "stakeholders."

- *USECP—Universal Service and Energy Conservation Plan*

This proposed definition is consistent with the definition of "USECP" found in 52 Pa. Code § 69.262; a USECP describes the benefits, policies, and procedures related to a public utility's universal service programs.

- *USECP proceeding*

This term replaces language referring to "Commission approval" in the LIURP regulations and refers to the PUC's process for reviewing a proposed USECP and for a proceeding whereby a public utility proposes to amend an existing USECP.

- *Universal service programs*

This proposed definition is consistent with 66 Pa.C.S. §§ 2203(8) and 2804(9) which require a public utility to offer a LIURP, CAP, CARES, and Hardship Fund, at the minimum, in a USECP. Other programs may be included in a USECP subject to PUC approval.

This second group of proposed definitions are included to clarify LIURP-specific terms and services:

- *De facto heating*

This term would be defined for the first time in this regulation. It has long been used in filings by stakehold-

[38] Definitions in Sections 69.261—69.267 (relating to policy statement on customer assistance programs) reflect policy considerations.

[39] The Natural Gas Choice and Competition Act and the Electricity Generation Customer Choice and Competition Act direct the PUC to ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each NGDC and EDC service territory. 66 Pa.C.S. §§ 2203(8) (relating to standards for restructuring of natural gas utility industry) and 2804(9) (relating to standards for restructuring of electric industry).

[40] The Commission has directed that "BCS will review the universal service plans and make recommendations to the Commission." See Reporting Requirements for Universal Service And Energy Conservation Programs 52 Pa. Code Chapter 62, Final Rulemaking Order, Docket No. L-00000146, (entered June 26, 2000), at 11.

ers and in PUC orders and other documents to refer to the use of an alternate heating source when the primary or central heating system in a residence is nonfunctioning or because public utility service or non-utility heating fuel has been terminated or depleted. This proposed definition is based on the description of "de facto heating" developed by the Universal Service Coordination Working Group.[41]

• *Dwelling*

This proposed definition is consistent with the definition of "dwelling" found in 52 Pa. Code § 56.2.

• *ESP—Energy service provider*

Public utilities use a variety of external agents and internal staff to provide program services. "ESP" is a general reference for such program service providers.

• *Health and safety measures*

This proposed definition refers to work necessary to correct conditions that affect the health and safety of the residents, the persons providing the measures in a dwelling, or both, before program measures can be installed, consistent with the guidance given to WAP agencies by the US Department of Energy, which identified Health and Safety actions as those "necessary to maintain the physical well-being of both the occupants and weatherization workers."[42]

• *Impact evaluation*

This proposed definition, which uses "universal service" to describe "program," is consistent with the definition of an "impact evaluation" found in 52 Pa. Code §§ 54.72 and 62.2.

• *Incidental repair*

This proposed definition is consistent with the description of "incidental repairs" found in § 58.12.

• *LIURP—Low-Income Usage Reduction Program*

This proposed definition is consistent with the definition of "LIURP" in 52 Pa. Code §§ 54.72 and 62.2 and identifies "LIURP" as a universal service program that provides energy usage reduction services, health, safety and comfort services, conservation education services, or a combination of such services to eligible customers.

• *LIURP job*

The proposed term refers to program services provided by an ESP to the dwelling of an eligible customer.

• *Post-installation inspection*

This proposed definition is consistent with the description of "post-installation inspection" in § 58.14.

• *Program year*

The proposed definition eliminates the need to explain that a LIURP program year begins January 1 and ends December 31 each time the term "program year" is used.

• *Weatherization*

This proposed definition refers to the work needed to install program measures to make a dwelling more energy efficient, consistent with the WAP technical glossary of the National Association for State Community Services Programs (NASCSP), which defines "weatherization" as the "process of reducing energy consumption and increasing comfort in buildings by improving the energy efficiency of the building and maintaining health and safety."[43]

This third group of proposed definitions are being introduced in this regulation to clarify terms related to the regulation of public utilities:

• *Commission—The Pennsylvania Public Utility Commission*

This term and its use is a standard part of Commission regulations.

• *CNGDO—City natural gas distribution operation*

This proposed definition has the same meaning and obligations as the term is used in 66 Pa.C.S. §§ 102 and 2212.

• *EDC—Electric distribution company*

The acronym replaces references to "electric distribution company" throughout the regulation and is synonymous with "electric distribution utility" (EDU), as defined in 66 Pa.C.S. § 1403.

• *NGDC—Natural gas distribution company*

The acronym replaces references to "natural gas distribution company" throughout the regulation, is synonymous with "natural gas distribution utility" (NGDU), as defined in 66 Pa.C.S. § 1403, and includes a regulated CNGDO for universal service and energy conservation purposes.

This fourth group of proposed definitions provides amendments and clarifications to existing definitions or terms:

Administrative costs

Administrative costs are expenses not directly related to the provision of program services. The proposed amended definition replaces audit expenses with expenses associated with quality control and training. The proposed amended definition eliminates confusion with energy audit expenses, which are directly related to the installation of program measures.

• *Eligible customer*

The proposed amended definition reflects the inclusion of a residential low-income customer or a special needs customer of a public utility because that customer would be eligible for LIURP if the customer meets the criteria for participation as specified in a public utility's USECP, which can include usage thresholds.

• *LIURP Advisory Committee*

The proposed amended definition is consistent with the purpose of LIURP Advisory Committees, which, like USACs, may consult with the public utility and provide advice regarding program services.

• *Low-income customer*

The proposed amended definition is consistent with the definition of "low-income customer" in 52 Pa. Code §§ 62.2 and 69.262.

• *Pilot program*

[41] See Universal Service Coordination Working Group Report, Docket No. M-2009-2107153 (Report issued November 18, 2009), at 1. https://www.puc.pa.gov/pcdocs/1060321.pdf (accessed on March 2, 2023).

[42] See DOE's Weatherization Program Notice 17-7: Weatherization Health and Safety Guidance (issued August 9, 2017), at 2. https://www.energy.gov/sites/default/files/2017/08/f35/WPN%2017-7%20H%26S%208.9.17.pdf (accessed on February 21, 2023).

[43] See NASCSP Technical Glossary at https://nascsp.org/wap/waptac/wap-resources/technical-glossary/ (accessed on August 26, 2021.) NASCSP is the sole national association charged with advocating and enhancing the leadership role of States in the administration of the Community Services Block Grant (CSBG) program and Weatherization Assistance Program (WAP). The U.S. Department of Energy's WAP reduces heating and cooling costs for low-income families, particularly for the elderly, people with disabilities, and children, by improving the energy efficiency of their homes while ensuring their health and safety. https://nascsp.org/about/ (accessed on September 17, 2021).

The proposed amended definition is consistent with the PUC's long-standing practice of approving a LIURP pilot program for purposes other than usage reduction through a USECP proceeding.

• *Program measure*

The proposed amended definition reflects that program measures may include installation and other related work performed on a dwelling.

• *Program service*

The proposed amended definition reflects that program services are LIURP services offered by or work performed by a public utility under Chapter 58.

• *Residential electric baseload customer*

This proposed term would replace and amend the term "residential high use electric baseload customer." This proposed definition would reflect that baseload electric usage does not use electric service for heating purposes. Because the proposed operative provision would provide a public utility flexibility to establish its own threshold for high usage for individual electric baseload accounts, subject to PUC approval, the provision that identifies electric baseload "high use" as usage greater than 125% of the average residential baseload customer would be removed from the definition.

• *Residential space-heating customer*

The proposed amended definition reflects changes relative to the primary heating source for the dwelling. The proposed amended definition removes language identifying a residential customer with an inoperable natural gas furnace as a space-heating customer because that usage would now be categorized as de facto heating.

• *Residential water-heating customer*

The proposed amended definition clarifies the long-standing distinction that "water-heating customers" refer to customers who use a water heater as the primary source of heat for their dwelling rather than customers who use a water heater to only heat water.

• *Special needs customer*

The proposed amended definition clarifies that a customer with a household income between 151% and 200% of the FPIG and with a household member or members who are age 62 and over or age five and under, need medical equipment, have a disability, are under a protection from abuse order, or are otherwise so defined as a special needs customer under the approved provisions of the public utility's USECP is a special needs customer. With the exception of a household member who is a young child, the demographics and conditions related to the special needs designation for a household member is consistent with existing provisions in public utility USECPs.[44] The designation of a household with a young child as "special needs" is consistent with the definition of a "vulnerable household" in Pennsylvania's 2023 LIHEAP State Plan at § 601.3 (relating to definitions).[45] The proposed amended definition also reflects that a customer does not need to have an arrearage to be considered special needs.

Finally, this fifth group proposes new definitions that would replace existing Chapter 58 terms to clarify program services offered or bring definitions into alignment with the universal service regulations. The following proposed definitions replace existing Chapter 58 definitions:

• *Energy audit*

This proposed term replaces and expands on the term "energy survey," reflecting that the initial energy audit is used to determine the energy usage of the dwelling as well as to identify any appropriate program measures needed to reduce energy use or health and safety issues.

• *Energy conservation education*

This proposed term replaces and expands on the term "usage reduction education" as used within the regulation, reflecting that energy conservation education includes training, instruction, presentations and workshops to explain energy conservation objectives and techniques.

• *Public utility*

This proposed term replaces the term "covered utility," that identifies utilities subject to the existing regulations based on specific annual sales thresholds (i.e., 750 million kilowatt-hours for EDCs and 10 billion cubic feet of natural gas for NGDCs). The proposed definition is consistent with 52 Pa. Code §§ 54.77 and 62.7, which specify that only EDCs serving at least 60,000 residential customers and NGDCs serving at least 100,000 residential customers are subject to universal service program and reporting requirements.

Section 58.3. Establishment of residential low income usage reduction program.

This section of the existing regulations[46] sets forth the requirement that a public utility establish a LIURP for its low-income customers. Stakeholder comments to Question No. 8 in the 2016 Secretarial Letter relate to this section.

Question 8: What is the appropriate percentage of federal poverty income guideline level (FPIG) to determine eligibility for LIURP?

Stakeholder Comments

OCA recommended that the bulk of LIURP funds should be set aside for those customers who are income-eligible for CAP. OCA also recommended that the regulations allow a public utility to earmark a certain level of funding, perhaps 20%—25%, for households with income between 150% and 200% of the FPIG. OCA Comments at 30.

PGW asserted that public utilities should have the flexibility to propose appropriate levels beyond the current definition in § 58.2. As PGW has a large population below 150% of the FPIG, it asserted that it would be inappropriate to treat customers above that level. PGW Comments at 9.

EAP suggested that public utilities should be granted leeway to offer measures to customers whose incomes are at or below 200% of the FPIG when deemed appropriate by the public utility due to the under participation or ineligibility of customers at 150% of the FPIG or below. Moreover, EAP recommended removing any limitation on spending up to 200% and allowing public utilities to better address their specific service territory needs. EAP Comments at 13.

PECO recommended allowing greater autonomy in spending LIURP funds on customers with incomes be-

[44] See, e.g., FirstEnergy 2019—2021 USECP, Docket Nos. M-2017-2636969, M-2017-2636973, M-2017-2636976, and M-2017-2636978 (filed on June 24, 2019), at 19. See also NFG 2022—2026 USECP, Docket No. M-2021-3024935 (filed on June 14, 2022), at 33.

[45] https://www.dhs.pa.gov/Services/Assistance/Pages/LIHEAP.aspx (assessed on March 23, 2023).

[46] The provisions of § 58.3 were amended January 2, 1998, effective January 3, 1998. See 28 Pa.B. 25.

tween 151%—200% of the FPIG. It had no specific proposal but cited the 20% limitation as prohibiting reduction opportunities. PECO Comments at 14.

PA-EEFA suggested that the PUC maintain the existing regulations to target individuals who are at or below 150% of the FPIG. PA-EEFA also suggested that LIURP eligibility levels be kept in conjunction with CAP eligibility levels to reduce the level of non-CAP ratepayer subsidies. PA-EEFA Comments at 20-21. PA-EEFA stated that increasing the threshold to 200% of the FPIG, without an increase in available funding, could result in reduced services to customers who face the greatest financial obstacles to maintaining utility services. PA-EEFA recommended that the PUC perform needs assessments at both 150% and 200% and authorize adequate funding if the pool of eligible ratepayers is increased to 200% of the FPIG. PA-EEFA RC at 4-5.

PPL recommended increasing the income level from 150% of the FPIG to 200% of the FPIG. Alternatively, PPL suggested that the PUC eliminate the "20 percent rule" in § 58.10(c) which would provide public utilities greater flexibility to serve customers whose income ranges from 151% to 200% of the FPIG. PPL Comments at 7. PPL recommended serving customers up to 200% of the FPIG, as it enables EDCs to serve a segment of customers not addressed through Act 129, and to provide more opportunities for coordination with other weatherization programs. PPL RC at 6.

Duquesne agreed that LIURP eligibility should be based on FPIG levels but believed that each public utility should work with BCS to determine the best criteria to meet needs. Duquesne RC at 7. While public utilities should be given discretion to target homes at 150% of the FPIG, Duquesne asserted that the strict 20% budget limitation to address homes with incomes between 150% and 200% of the FPIG should be eliminated. Duquesne Comments at 8.

Proposed Revisions to Section 58.3.

We propose to retitle this section as "Establishment and maintenance of a residential LIURP" (currently "Establishment of a residential low income usage reduction program"). The proposed amendments in this section clarify the responsibility of a public utility to establish and maintain a LIURP for its low-income and special needs customers. The terms used in the proposed amendments are updated consistent with the proposed definitions in § 58.2.

Section 58.4. Program funding.

This section of the existing regulations sets forth the methodology of program funding for a LIURP and states that LIURP budgets can only be revised through a public utility petition or USECP proceeding. The existing section sets forth the method by which a LIURP budget is established or changed, the factors to be considered when making revisions to the LIURP budget, and the recovery of LIURP costs. Furthermore, this section permits public utilities to propose pilot programs for the development and evaluation of conservation education and other innovative technologies. Stakeholder comments to Question No. 11 in the 2016 Secretarial Letter relate to this section.

Question 11: Should the requirements regarding a needs assessment in developing LIURP budgets, as outlined at 52 Pa. Code § 58.4(c), be updated to provide a calculation methodology uniform across all utilities? If so, provide possible methodologies.

Stakeholder Comments

OCA asserted that the LIURP regulations should include a uniform methodology for calculating the required "needs assessment." In addition to the factors already contemplated in the existing LIURP regulations, OCA identified several other factors to be added to the needs assessment:

(1) Type of housing.

(2) Average age of the housing stock.

(3) Number of customers who directly pay their utility bills (to distinguish master-metered versus individually metered customers).

(4) Type of heating fuel used by the customer.

(5) Housing units occupied by low-income households.

(6) Housing units that have not been previously treated with LIURP (or other usage reduction program) services in a period longer than that which would not preclude re-treatment.

(7) Timeline for completion.

OCA Comments at 32-33. OCA further asserted that PUC regulations are silent regarding how unspent LIURP funds are treated at the end of the program year and that unspent funds should be treated in a consistent manner across all public utilities. OCA stated that if a public utility underspends its annual LIURP budget, the amount of the underspending should be rolled over into the next program year's budget. OCA comments at 7-8. OCA agreed with most stakeholders that a standardized, uniform methodology should be explored for calculating the LIURP needs assessment. OCA believed that the needs assessment should be flexible, should set a budget level specific to the utility's needs within the service territory, and that the analysis should account for the impact on non-participating customers who pay the program costs. OCA RC at 15-16.

According to PGW, the variables used in the LIURP needs assessment should be customized to the individual service territories. PGW asserted that the needs assessment must be careful to ensure that non-participating customers are not overburdened by high program costs. The purpose of a needs assessment should be explained, and service territory needs alone should not mandate a specific annual spend amount. PGW Comments at 11-12.

FirstEnergy was interested in exploring improvements to their calculation methodology only if they are developed in recognition of the different conditions among public utilities' service territories. FirstEnergy Comments at 10.

PECO noted its support for developing a standard needs assessment test or tool that would permit the flexibility to illustrate the differences among service territories, income levels, housing stock, number and percentage of eligible customers, number of high-usage CAP customers who have not received LIURP treatment in recent years. PECO Comments at 17.

PA-EEFA suggested that subsections (1) through (4) of § 58.4(c) require more specificity. PA-EEFA believed that a new structure is needed to determine initial funding levels. PA-EEFA suggested using the funding levels in effect at the time the revised regulations are adopted as a minimum floor. Further, PA-EEFA suggested that LIURP funding for natural gas and electric public utilities should be determined based on a PUC-established timeline for providing comprehensive, fuel-neutral services to all income eligible customers. PA-EEFA also submitted that

historical participation rates and average costs should not be the sole basis to set expected participation and budgets. PA-EEFA recommended that the PUC:

- Determine the number of income-eligible low-income households within each service territory using current census data.
- Determine expected costs per customer needed to provide comprehensive fuel-neutral efficiency services based on standards to be developed by the PUC that achieve acceptable energy savings.
- Establish a policy for the length of time over which it would be reasonable and appropriate to provide services to all eligible customers.
- Adjust each public utility's budget allocation based on the unique factors of each service territory.

PA-EEFA Comments at 26, 27.

Duquesne recommended that a needs assessment allow for flexibility to account for service territory differences (i.e., a lack of all-electric homes) and income levels. Duquesne Comments at 9.

PPL supported working with the PUC and other stakeholders to work towards a standard and an improved methodology. PPL Comments at 9. However, PPL generally disagreed with OCA's recommendation of a multifamily housing needs assessment as it could impact a public utility's need to serve single-family customers who may have a greater need for the program services. PPL RC at 8.

CEO supported OCA's recommendation that minimum funding levels for NGDCs in Section 58.4(a) should be eliminated and that the budget should be determined by the needs of the customers in a NGDC's service territory. CEO also supported OCA's recommendation that any unspent funds be carried over into the next program year. CEO RC at 1-2.

FirstEnergy was concerned regarding OCA's and PA-EEFA's suggestion that the needs assessment methodology be modified to include a projected timeline identifying when all LIURP-eligible customers would receive services. FirstEnergy stated that the LIURP budget should not be designed to assume installation of weatherization services for all income-eligible customers. FirstEnergy noted that the public utilities have no reasonable basis for projecting the timeline for a single job, let alone for all feasible LIURP jobs, as the timeline of a LIURP job is determined after visiting each residence and evaluating the cost-effective measures available to the customer. FirstEnergy remained interested in joining a working group to discuss the needs assessment and suggested that any changes be personalized to show the public utilities-specific differences throughout the Commonwealth. FirstEnergy RC at 4-5.

EAP noted its support for a standardized and clear needs assessment methodology with measurable criteria that provides sufficient flexibility to account for differences in public utility service territories. EAP suggested that any resulting regulations should clarify the purpose of the needs assessment. EAP Comments at 14-15. EAP agreed with OCA and PA-EEFA that LIURP needs assessments could benefit from additional clarity and standardization, and that this could be achieved through stakeholder collaboration. EAP did not agree with recommendations to incorporate a timeframe to address all potentially eligible households into the LIURP regulations due to the various weatherization programs offered across the state. EAP stated that the additional variables that OCA asked to be considered in a needs assessment (i.e., type of house, age, heating fuel) are not readily available to public utilities and would be costly to collect, along with having to consider privacy concerns. EAP RC at 4-5.

EAP did not support OCA's recommendation to establish LIURP budgets based on the need in the service territory, as it would "create too much ambiguity." EAP asserted that the existing guideline of at least 0.2% of jurisdictional revenues in § 58.4(a) establishes a useful benchmark. EAP stated that the LIURP budgets should not just consider the needs assessment but should also consider the overall cost burden on the service territory ratepayers. EAP asserted that the LIURP budgets should be determined either through a USECP proceeding or be based on the same fixed percentage of jurisdictional revenues for all public utilities. EAP RC at 5.

PA-EEFA asserted that a needs assessment is intended to determine the extent to which need for LIURP exists, and that conflating a determination of need with a determination of cost impact could disguise an accurate understanding of need. PA-EEFA agreed with OCA's recommendation that unspent LIURP funds should be carried over to the next program year, but with the caveat that the unspent funds would be in addition to the budget and that the PUC should be explicit in its expectations that public utilities try to spend the full budget amount each year, rather than underinvest. PA-EEFA RC at 4, 6.

Proposed Revisions to Section 58.4.

We propose to retitle this section as "LIURP budgets" (currently "Program funding") consistent with the proposed definitions in § 58.2, regarding replacing "program" with "LIURP" and to reflect the difference between LIURP budgets and the LIURP funding mechanism. LIURP budgets are approved in a USECP proceeding that includes a comment period. This proposed amendment clarifies that a LIURP budget can only be revised through a USECP proceeding initiated pursuant to the periodic USECP review process or in response to a petition to amend a USECP earlier than the periodic USECP review process. This section sets a maximum annual LIURP budget allowance for special needs customers as well as the factors and expenses that must first be considered to revise a LIURP budget. Furthermore, this section establishes provisions for unspent LIURP funds at the end of a program year and the mechanism for recovering LIURP costs. Other terms in this proposed amendment are updated consistent with the proposed definitions in § 58.2.

Amendments to this section remove § 58.4(a), which addresses NGDCs, and § 58.4(b), which addresses EDCs, to consolidate general LIURP budget provisions for NGDCs and EDCs in a new § 58.4(a.1). Section 58.4(a.1) incorporates provisions requiring a public utility to propose annual LIURP budgets for the term of its USECP. Changes to approved LIURP budgets would require a public utility to propose the change in a petition. This proposal is intended to standardize the methodology for determining LIURP budgets to ensure that modifications conform to regulatory or policy-level considerations.

LIURP costs are universal service costs. The requirements of 66 Pa.C.S. §§ 2804(9) and 2203(8) mandate that the PUC ensure universal service and energy conservation policies, activities and services for residential electric

and natural gas customers are appropriately funded,[47] available in each EDC and NGDC territory, and operated cost-effectively. The appropriateness, effectiveness, and prudence of the cost of universal service is determined in a USECP proceeding. How those universal service costs are recovered is addressed in a rate case.

LIURP budgets have sometimes been modified through black box settlements among parties in rate cases.[48] When a LIURP budget is modified outside a USECP proceeding through a settlement, the settlement agreement often does not explain how the LIURP budget was determined or how this change addresses an unmet need in the public utility's service territory. As LIURP is a ratepayer-funded program, considerations impacting its budget determination should be open to scrutiny and comment. USECP proceedings allow all interested parties to provide comments, raise questions, and review information justifying the proposed change to the LIURP budget in an on-the-record proceeding. Information and data provided by the public utility and stakeholder input allow the PUC to determine whether the proposed LIURP budget appears cost-effective. This change is consistent with EAP's recommendation. EAP RC at 5. Adjusting the LIURP budget based on the needs of the service territory is also consistent with OCA's recommendation. OCA Comments at 7.

The proposed § 58.4(a.2) also incorporates the provision removed from § 58.10(c) that allows a public utility to spend a percentage of its LIURP budget on special needs customers. We propose to increase this spending limit from 20% to 25% of the LIURP budget. This increase provides public utilities greater flexibility to serve more special needs customers who are ineligible for CAP but still need help with their utility bills. Since WAP income limits are set at 200% of the FPIG, this proposal increases the pool of potential LIURP referrals and provides more opportunities for coordination with WAP and other weatherization programs. OCA supported increasing the level of spending for special needs customers to 25%. OCA comments at 30. EAP, PECO, Duquesne, PPL, FirstEnergy, NFG, CEO, and the PA Weatherization Taskforce recommended increasing the LIURP income limit to 200% of the FPIG for all customers or eliminating the 20% spending limit for special needs customers. EAP comments at 13, PECO comments at 14, Duquesne comments at 8, PPL comments at 7, FirstEnergy comments at 5-6, NFG comments at 5, CEO comments at 4, PA Weatherization Taskforce comments at 3. This change would not restrict a public utility's ability to seek a waiver of the spending limit if it is having trouble spending its total annual LIURP budget and if it is able to assist more special needs customers within its service territory.

We propose to revise § 58.4(c) titled to "Revisions to a LIURP budget" (currently "guidelines for revising program funding"). Amendments to § 58.4(c) further clarify that revisions to a LIURP budget are accomplished through a USECP proceeding and incorporate additional factors for a public utility to consider when proposing revisions to its LIURP budget. Existing § 58.4(c)(1)—(4) are amended as follows:

- § 58.4 (c)(1)-(2) require a public utility to identify the number of estimated low-income customers and confirmed low-income customers by FPIG levels 0% through 50%, 51% through 100%, 101% through 150%, and 151% through 200%.
- § 58.4(c)(3) requires a public utility to identify the number of special needs customers within its service territory.
- § 58.4(c)(4)-(5) requires a public utility to account for the number of eligible confirmed low-income customers and special needs customers that could be provided program services.
- § 58.4(c)(6) requires that a public utility base its expected LIURP participation rates on the number of eligible confirmed low-income customers and historical participation rates.
- § 58.4(c)(7) includes expenses related to training in the total expense of providing program services.
- § 58.4(c)(8) clarifies that a public utility shall also include a plan, within a proposed timeline, to provide program services to eligible customers.

Section 58.4(d) is proposed to be removed and reserved, and the requirements regarding pilot programs is moved to § 58.13a(a) (relating to LIURP pilot programs).

We propose to add § 58.4(d.1) that requires a public utility to re-allocate (i.e., carryover) unspent LIURP funds to the LIURP budget for the following program year, unless an alternate use of these funds is approved through a USECP proceeding. We are proposing this provision to incentivize public utilities to use all available LIURP funds each year or seek out more eligible LIURP participants for the following year. While the existing regulations in Chapter 58 do not expressly require a public utility to carryover unspent LIURP funds from one program year to the next, we have approved carryover of unspent LIURP funds into the next program year in rate case settlements.[49] Section 58.15(c)(6) would require a public utility to report annually if more than 10% of the annual LIURP budget remains unspent.

This change is consistent with the recommendations of OCA, CEO, and PA-EEFA, expressing support for carrying over unspent LIURP funds into the next year's program budget. OCA Comments at 7-8, CEO RC at 2, PA-EEFA RC at 6.

We propose to retitle the existing § 58.4(e)(1) as "Recovery of LIURP costs" (currently "recovery of costs"). The proposed § 58.4(e)(1) specifies that LIURP costs are allotted among ratepayers. As a universal service cost, LIURP costs are recoverable.[50] The proposed amended

[47] Section 58.4(a) sets annual LIURP funding for a natural gas public utility at a minimum of 0.2% of the public utility's jurisdictional revenues. Section 58.4(b) specifies that a target funding level for an electric public utility is to be computed at the time of the Commission's initial approval of the public utility's LIURP. Both sections provide that the funding continues at the level set "until the [PUC] acts upon a petition from the utility to change the funding level, or until the [PUC] reviews the need for program services and revises the funding level through a [PUC] order that addresses the recovery of program costs in utility rates. Proposed funding revisions that would involve a reduction in program funding shall include public notice found acceptable by [BCS], and the opportunity for public input from affected persons or entities."

[48] See, e.g., *Pa PUC, et al. v. Columbia Gas of Pennsylvania*, Docket No. R-2018-2647577 (order entered December 6, 2018); *Pa PUC, et al. v. Duquesne Light Company*, Docket Nos. R-2018-3000124, R-2018-3000829 (order entered December 20, 2018); and *Pa PUC, et al. v. PPL Electric Utilities*, Docket No. R-2015-2469275 (order entered November 19, 2015).

[49] See *Pa PUC, et al. v. UGI Utilities, Inc. Gas Division*, Docket No. R-2018-3006814 (order entered October 4, 2019); see also *Pa PUC, et al. v. FirstEnergy Companies*, Docket No. R-2016-2537349 (order entered January 19, 2017).

[50] See 66 Pa.C.S. §§ 2804(8) and 2203(6). See also Re Guidelines For Universal Service and Energy Programs, Docket No. M-00960890 F0010 (order entered 7/11/1997), 87 Pa. P.U.C. 428 (1997), 178 P.U.R.4th 508, in which we said that in 66 Pa.C.S. § 2802(17) (relating to declaration of policy):

> [R]requires that the public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services; and full recovery of such costs is to be permitted through a non-bypassable rate mechanism. Section 2804(8) requires that the Commission establish for each [EDC] an appropriate cost recovery mechanism which is designed to fully recover the [EDC's] universal service and energy conservation costs over the life of these programs. Section 2804(9) requires the [PUC] to ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each [EDC] territory. These policies, activities and services shall be funded in each [EDC] territory by non-bypassable competitively neutral cost recovery mechanisms that fully recover the costs of universal service and energy conservation services.

§ 58.4(e)(2) reflects updated definitions. We propose to add § 58.4(e)(3) to clarify that the LIURP funding mechanism for recovery of LIURP costs must be determined in a public utility's rate proceeding.

Section 58.5. Administrative costs.

This section of the existing regulations sets the parameters of LIURP administrative costs for program funding and its associated cap, as well as LIURP pilot program administrative cost exemptions. There were no Questions in the 2016 Secretarial Letter relative to § 58.5.

Stakeholder Comments

PGW recommended modifying the current 15% cap set forth in § 58.5 by allowing an increase in administrative spending to encourage program coordination but only when and if cost-effective. PGW Comments at 3.

CEO supported keeping the 15% administrative cap for LIURP. CEO pointed out that since 1993, it was believed that LIURP would become more efficient and engage in greater coordination with other programs and, over time, produce lower administrative costs. CEO RC at 1.

Proposed Revisions to Section 58.5.

We propose to divide this section into § 58.5(a) and (b) to clarify the different limits associated with LIURP administrative costs and pilot program administrative costs. The terms in this proposed section would also be updated consistent with the proposed definitions in § 58.2.

The proposed § 58.5(a) addresses the provisions in the first sentence in the existing § 58.5 and is titled "LIURP administrative costs" to reflect the content.

The proposed § 58.5(b) is titled "LIURP pilot program administrative costs" and incorporates existing language from § 58.5 that waives limits on LIURP administrative costs for approved pilot programs. As described in § 58.13a(c), prior to implementation, a pilot program must be reviewed and approved in a USECP proceeding, including establishing its proposed LIURP budgets and permissible administrative costs.

Section 58.6. Consultation.

This section of the existing regulations requires a public utility to consult with certain stakeholders regarding proposed modifications to its LIURP design, including proposing a pilot program. There were no Questions in the 2016 Secretarial Letter or stakeholder comments received relative to § 58.6.

Proposed Revisions to Section 58.6.

The terms in this section are updated consistent with the proposed definitions in § 58.2, including replacing "program" with "LIURP" when appropriate. This section is amended to include persons or entities with experience in the design or administration of energy efficiency and weatherization programs to the list of entities that a public utility may consult with when making proposed modifications to its LIURP or developing a pilot program. Entities that a public utility may consult with include its USAC, its LIURP Advisory Committee, or both.

Section 58.7. Integration.

This section of the existing regulations sets forth the requirement that a public utility coordinate its LIURP with other programs to provide LIURP participants with direct assistance applying for LIHEAP and other relevant low-income assistance programs. It further requires a public utility to provide program services, when possible, through independent agencies with experience and effectiveness in the administration and provision of program services or through a competitive bid process. Stakeholder comments to Question No. 2 in the 2016 Secretarial Letter relate to this section.

Question 2: How should LIURPs be structured to maximize coordination with other weatherization programs such as DCED's WAP and Act 129 programs?

Stakeholder Comments

OCA recommended directing improved coordination efforts toward a "whole-house" approach so that LIURP service providers can meet the home's needs in a single visit. Further, OCA submitted that the need for separate customer applications and program eligibility determinations would also be avoided under this approach. OCA strongly supported strengthening coordination to maximize the cost-effectiveness of LIURPs. OCA Comments at 23-24. OCA also supported PA-EEFA's recommendation that the programs be delivered as "integrated programs." OCA favored treating the whole house in a single visit and coordinating LIURP resources with WAP regardless of the type of public utility providing the service. OCA stated that this approach would eliminate distinctions between electric or natural gas jobs (i.e., baseload, water heating, heating) and allocated costs could be rectified by the accounting process. OCA agreed with PECO's assertion that eligibility requirements should be reduced or eliminated to encourage increased program coordination. Increased coordination would ease burdens and minimize inconvenience for the low-income customer which might increase participation. OCA RC at 4—6.

According to PA-EEFA, inter-utility coordination is impeded by several factors. These included: lower LIURP budgets for NGDCs when compared to EDCs' budgets, the requirement that natural gas customers be residential heating customers, the prohibition on fuel switching, and the insistence on fuel-specific quantification of savings. PA-EEFA recommended that the PUC consider remedies to each of these barriers. PA-EEFA stated that the PUC should consider requiring public utilities to prioritize WAP providers as LIURP and Act 129 providers to better ensure inter-program coordination. PA-EEFA asserted that if a customer qualifies for LIURP based on electric usage, but also has natural gas service, LIURP should address all cost-effective efficiency opportunities in one transaction. PA-EEFA Comments at 9-10.

PGW submitted that coordination between LIURP and other weatherization or home repair programs should be assessed on an individual public utility basis and remain faithful to the purpose in § 58.1. PGW asserted that baseline customer eligibility must be consistent for coordination efforts to be successful. Further, PGW contended that coordination activities could require conservation service providers (CSPs) to perform income verification.[51] PGW stated that this process could involve sharing sensitive customer financial information, which some weatherization contractors may not be equipped to handle, and customers may be unwilling to provide to a CSP. PGW submitted that the area with the greatest potential for coordination opportunities lies in addressing the health and safety issues that prevent comprehensive weatherization measures. PGW Comments at 3.

PGW suggested that the following approaches could be used to help meet program coordination goals: 1) if a CSP is performing work for two utility programs in an overlapping jurisdiction, that CSP could develop agreements with both public utilities for how to perform work and expense

[51] PGW uses a CSP to provide LIURP services.

it under Utility B's program when in the home for a Utility A customer; 2) if programs that provide services that are the same or similar to PGW's collect PGW account numbers and customer authorization waivers as part of their intake process and provide PGW with a list of those PGW account numbers, PGW would screen its customer list to flag any accounts that are also assigned to its LIURP, so that they are not contacted and treated by two programs; or 3) where possible, programs could develop "prescriptive" approaches toward referrals and coordination. PGW Comments at 4.

According to EAP, one way to better coordinate LIURP and WAP lies in eliminating the 20% maximum public utilities may spend on customers who fall between 150% and 200% of the FPIG when deemed appropriate by the public utility due to under participation or ineligibility of customers at 150% or below. EAP Comments at 8. EAP was concerned that any integrated service delivery also complicates the prioritization of LIURP customers under § 58.10 and may not ensure that the highest users are treated first. EAP stated that the selection criteria of agencies that perform LIURP work should be left to the public utilities to determine and should be based on the public utilities' service territory and procurement requirements, not determined by regulation. EAP cautioned the PUC against inserting itself into the marketplace by mandating the use of certain non-profits or businesses. EAP RC at 8-9.

To improve coordination between WAP and LIURP, FirstEnergy recommended increasing the eligibility level for LIURP to 200% of the FPIG for all low-income customers, thereby eliminating the current inconsistent eligibility levels of the two programs. Due to the EDCs being in the best position to evaluate their internal procedures and determine the best methods for coordinating between their Energy Efficiency and Conservation (EE&C)[52] and LIURP programs, FirstEnergy opined that it is unnecessary for the LIURP regulations to advise uniform coordination procedures. FirstEnergy Comments at 5-6. FirstEnergy stated that it voluntarily coordinates with WAP but noted that, in some cases, coordination did not result in efficient LIURP implementation. FirstEnergy suggested that coordination procedures should be evaluated in USECP proceedings rather than formally adopted within regulations. FirstEnergy RC at 3.

PECO suggested targeting four areas to improve coordination: eligibility and targeting, energy survey requirements, administrative costs, and measure installations. Because varying eligibility standards and targeting requirements often serve as a barrier to coordination, such requirements should be reduced or eliminated where possible to increase coordination. PECO suggested the development of a joint audit data collection system for LIURP and WAP to increase cost savings. While increased coordination may include administrative cost increases, PECO suggested that they should be allowed as a coordination expense. PECO Comments at 6-7.

Duquesne supported open discussion about coordination and suggested that a stakeholder meeting could facilitate the flexibility and forward thinking for such coordination. Duquesne RC at 4. Duquesne claimed that it facilitates such coordination by inviting representatives from overlapping NGDCs and the Commonwealth's WAP to its Act 129 Stakeholder meetings. Additionally, Duquesne noted that, when possible, an integrated electric and natural gas energy audit is conducted by a common contractor with the costs shared between the public utilities. Further, Duquesne stated that during energy audits for homes eligible for its LIURP,[53] the energy auditor will ask customers if they would like a referral to the NGDC for gas-heating measures. Duquesne Comments at 4-5.

PPL submitted that smaller weatherization programs should identify non-emergency jobs and reach out to larger weatherization providers to streamline coordination efforts. Public utilities should be allowed to share customer application and usage data provided that all providers agree to keep customer information confidential. PPL recommended that the PUC create a working group to update coordination procedures, to provide guidelines for de facto heat customers, and to develop a process for addressing "high energy" customers who use multiple heating sources. PPL suggested that the PUC add language to boost joint training, quality assurance, and training initiatives for weatherization providers when cost effective and reasonable. Additionally, PPL suggested removing the word "direct" from "the covered utility shall provide direct assistance to low income usage reduction program recipients in making application to secure available energy assistance funds" found in § 58.13(a). PPL Comments at 3-4, 12.

PPL did not believe the regulations should necessitate the select use of CBOs or WAP agencies as the public utilities are accountable for their program results. PPL noted that it uses a combination of CBOs and private contractors to successfully manage and maximize timely LIURP services. PPL supported coordination between EDCs and NGDCs but believed it should not be a mandate as coordination is not always practical. PPL stated that it needs more details on how water company coordination would work before supporting its inclusion in any LIURP regulations. PPL RC at 2-3.

PA-EEFA believed that if smaller public utilities take over a greater share of coordination management, then their administrative costs will be disproportionally large and would create the appearance that their LIURPs are not as efficient as larger public utilities. PA-EEFA asserted that all programs have an obligation to share and coordinate with each other. PA-EEFA stated that coordination can and should reduce administrative costs by eliminating redundant activities such as customer eligibility, audit, and project management services. PA-EEFA added that there will also be increased benefits for low-income ratepayers and the total cost per unit of savings should be less than it would be if multiple programs pursued a similar level of savings. PA-EEFA acknowledged the comments of DEP & DCED that LIURPs should share in the WAP National Work Standards and recognized the technical value of that suggestion but recommended further study and discussion. PA-EEFA RC at 9-10, citing DEP & DCED Comments at 3.

Proposed Revisions to Section 58.7.

The terms in this amended section are updated consistent with the proposed definitions in § 58.2.

We propose to remove and reserve § 58.7(a). Provisions in § 58.7(a) concerning the coordination of program services with existing resources are addressed in §§ 58.7(b) and 58.14c. Section 58.7(b) is revised to clarify that LIURPs must work in conjunction with other universal service and public/private programs that provide energy assistance or similar assistance to the community. The

[52] Act 129 requires each EDC with at least 100,000 customers to adopt EE&C plans to reduce energy demand and consumption within its service territory. 66 Pa.C.S. § 2806.1.

[53] Duquesne's LIURP is called "Smart Comfort."

revised § 58.7(b) also clarifies that a public utility, directly or through assigned third-party agency, shall assist LIURP participants in applying for energy assistance programs, such as LIHEAP, for which they may be eligible.

We propose to remove and reserve § 58.7(c). The provisions in § 58.7(c) concerning the selection of qualified independent agencies is moved to the proposed § 58.14b (relating to use of an ESP for program services).

The proposed amendments to § 58.7 are consistent with the comments of OCA and PA-EEFA that supported a delivered approach to "integrating programs." OCA RC at 4-5; PA-EEFA Comments at 7. OCA also supported strengthening coordination to maximize the cost-effectiveness of LIURPs. OCA Comments at 23.

Section 58.8. Tenant eligibility.

This section of the existing regulations[54] explains how tenant households can receive program services and what eligibility criteria must be met. It further directs how voluntary landlord contributions toward a tenant household's program services are to be applied. Finally, this section mandates that a public utility require landlords to agree to time-limited restrictions on rent increases and evictions before installing program measures. Stakeholder comments to Question No. 10 in the 2016 Secretarial Letter relate to this section.

Question 10: What are options to better serve renters, encourage landlord participation, and reach residents of multifamily housing?

Stakeholder Comments

OCA stated that multi-family housing efforts are best undertaken through the EDCs' Act 129 programs and through voluntary natural gas programs. OCA claimed that LIURP funds should not be used to provide services when the tenant is not the public utility's direct customer. Instead, OCA submitted that such multi-family units should be treated as commercial property with appropriate cost recovery via the Act 129 program or a voluntary natural gas program. LIURP funding should not be used to treat a housing unit unless a minimum proportion of the housing units in the multi-family building are determined low-income, as defined by the LIURP regulations. Specifically, OCA recommended that the multi-family properties have substantially more than 50% occupancy of low-income tenants to be eligible for LIURP services. OCA Comments at 30-31.

To reach landlords, OCA recommended using partnerships with other agencies as well as with local professionals such as architects and commercial construction managers who are likely to be aware of renovations and repairs in rental properties with which energy usage reduction measures might be piggybacked. OCA also recommended that public utilities partner with local property inspectors to identify rental units that will be undertaking renovations that could provide an opportunity for weatherization services to be performed simultaneously. As obtaining local building (such as for electrical work) permits can be burdensome, OCA suggested having LIURPs seek an expedited permit process for usage reduction projects to make the weatherization process more attractive to building owners or managers. OCA Comments at 31-32.

PGW claimed the requirement in § 58.8 that landlords not evict a renter or raise rent for 12 months post-weatherization may not achieve its purpose. PGW stated that the value added to the property from weatherization measures far outlasts this limited requirement since weatherization measures may last up to 40 years. PGW was concerned that the weatherization improvements may result in landlords increasing rent and marketing the residence to non-low-income customers after the initial 12-month period expires. PGW Comments at 10.

According to PGW, multi-family properties may be master-metered or tenant-metered and that LIURPs must be designed carefully to avoid subsidizing non-low-income customers and the sharing of sensitive customer information and eligibility validation. PGW also suggested that comprehensive weatherization through LIURP may not be an appropriate method to address multi-family properties. PGW Comments at 11.

EAP asserted that subsidizing weatherization at commercial properties with LIURP funds would be inappropriate because usage reduction programs target residential ratepayers, not building owners. EAP Comments at 14.

While the landlord-tenant dynamic of multi-family housing presents additional installation challenges, FirstEnergy asserted that its efforts to increase landlord participation have been successful. According to FirstEnergy, landlords are also permitted to assist in choosing the measures at the building, e.g., baseload or full weatherization measures, and may be present for LIURP audits. Additionally, FirstEnergy suggested that its use of a "one form" policy whereby landlords can sign one form to approve LIURP installation throughout an entire building has encouraged multi-family property participation. FirstEnergy Comments at 10. FirstEnergy stated that multi-family housing should be encouraged as a best practice but that regulations should not be modified as it will create competition with Act 129 programs, which better address multi-family housing. FirstEnergy RC at 5-6.

PECO contended that landlord refusals should be combatted by education, information, and outreach to landlords. PGW stated that it could be helpful for the PUC to clarify that LIURP funds can be used to support landlord outreach efforts and encourage public utilities to make such efforts. PECO Comments at 16.

PA-EEFA suggested that the PUC revise the LIURP regulations to create targets for multi-family participation that reflect the fraction of the eligible population that lives in multi-family units. PA-EEFA urged the PUC to allow for LIURP services to low-income multi-family tenants who reside in buildings that are heated with natural gas when the account is master-metered in the landlord's name. PA-EEFA Comments at 24-25.

Duquesne submitted that it focuses on low-income, multi-family premises without master-meters and strives to meet the needs of all low-income customers at those premises. However, it supported further discussion on this topic. Duquesne Comments at 9.

PPL contended that responding to landlord questions in a timely manner and helping tenants with applications and enrollment encourages landlords to participate in LIURP. When it does not receive landlord permission, PPL provides energy education, baseload items, and energy conservation kits to the customer. PPL suggested that the PUC revise § 58.8(a) to eliminate the following required provision from landlord consent letters as it causes confusion or concern for landlords and disincentives them to consent to LIURP services:

[54] The provisions of § 58.8 were amended January 2, 1998, effective January 3, 1998. See 28 Pa.B. 25.

> [T]he landlord agrees, in writing, that rents will not be raised unless the increase is related to matters other than the installation of the usage reduction measures, and the tenant not evicted for a stated period of time at least 12 months after the installation of the program measures, if the tenant complies with ongoing obligations and responsibilities owed the landlord.

PPL Comments at 8.

OCA recommended that the PUC define multi-family housing to distinguish between master-metered and individually metered properties and to address the way they are treated, including the proper cost recovery for each. OCA stated that LIURP funds should only be used when the tenant is the direct customer of the public utility and that the regulations should be modified to include a separate needs assessment to identify individually metered multi-family housing within each service territory. OCA RC at 12.

OCA did not agree with PA-EEFA that LIURP funds should be used to provide services to gas-heated master-metered buildings because the landlord is the account holder and is served under a commercial tariff. OCA recommended that LIURP create separate multi-family needs assessments for tenant-paid situations that includes a target for participation. OCA supported PA-EEFA's recommendation to consider revising LIURP regulations to look at high usage on a square foot basis, rather than on a strict usage threshold and agrees that multi-family residences are often less efficient on a square-foot basis than single family homes. OCA asked for proper consideration of the inefficiency. OCA stated that, to the extent multi-family housing is addressed with LIURP funding, then the regulations should address 1) cost recovery for both individually metered and master-metered properties, 2) treatment of common areas and types of costs for individually metered buildings, and 3) what percentage of multi-family units should be low-income within a multi-family building. OCA recommended a minimum of 75% of tenants should be low-income to qualify. OCA RC at 13—15, citing PA-EEFA Comments at 24.

PPL opposed using any ratepayer funds to incentivize landlord participation in LIURP and does not support creating any participation targets for multi-family housing. PPL stated that it allowed LIURP weatherization of multi-family buildings if 50% of occupants are low-income and thought OCA's recommendation of a 75% threshold would be a barrier for landlords. PPL RC at 7.

PA-EEFA disagreed with some of CEO's and PPL's suggestions. It did not agree with CEO's recommendation to serve a multi-family building if only 50% of units are eligible low-income because that would result in fewer services being provided for those most in need. PA-EEFA supported requiring two-thirds of units to be income-eligible for a multi-family building to receive weatherization and pointed out that a consistent threshold across public utility LIURPs could streamline program communication and verification. PA-EEFA cautioned that PPL's suggestion of easing landlord requirements could result in reduced benefits to LIURP-qualified tenants who might then be forced to move from their rental homes. PA-EEFA stated that if landlords raise rents or evict tenants, as is currently prohibited with a LIURP consent form, then any benefits in reduced arrears would be rendered null. PA-EEFA RC at 5, citing CEO Comments at 4.

PA-EEFA acknowledged the issues and regulatory considerations that must be overcome for LIURP to apply to master-metered-multi-family properties. However, PA-EEFA still urged the PUC to address opportunities for LIURPs to serve multi-family housing that is financed under a Federal or State affordable housing program with long-term affordability restrictions in place, regardless of who pays the utility bill. PA-EEFA supported OCA's recommendation to develop a separate LIURP needs assessment for the multi-family sector and added that the needs assessment should assess master-metered-multi-family properties in addition to those multi-family properties where tenants pay utility bills directly. PA-EEFA RC at 6-7.

EAP did not believe that multi-family housing should be subjected to stringent regulations or specific targets because increasing multi-family participation for property owners earning a profit from a rental business should not be a primary goal of LIURP. EAP cautioned against mandating any threshold requirement or percentage of occupants required to be low-income for a multi-family housing building. EAP disagreed that whoever pays for measures is secondary to ensuring that the measures are performed. EAP pointed out that each program comes with separate funding and recovery mechanisms, so administering a shared LIURP program across a service territory would be prohibitively complex. EAP noted that landlords, not master-metered tenants, are the primary beneficiaries of the weatherization measures provided to a multi-family building. Mandating master-metered program measures would result in residential ratepayers subsidizing the cost of providing weatherization treatments to commercial properties through the LIURP funding mechanism. EAP RC at 6—8.

Proposed Revisions to Section 58.8.

We propose to retitle this section as "Tenant household eligibility" (currently "tenant eligibility") to more accurately reflect the individuals living in a single rented dwelling. The term "tenant household" replaces "tenant" in this section.

The provision in § 58.8(a) that requires an agreement from a landlord to not raise rent or evict a tenant for at least 12 months after installation of program measures would become the new § 58.8(c). The new § 58.8(c) makes the non-eviction clause an option, rather than a requirement, that a public utility could impose as a condition of LIURP. Making this provision optional would not prevent a public utility from requiring the provision in a landlord agreement. The contractual provisions regarding rent increases or evictions would then be a matter for the tenant, the landlord, and the public utility to enforce.

Proposed amendments to § 58.8(a)(1) incorporates modified language from the existing § 58.8(a) requiring a public utility to document the landlord's agreement for the installation of program measures and includes a new provision that requires the public utility to provide a tenant household with a copy of the landlord's documented agreement. The proposed amendment to § 58.8(a)(2) allows a tenant household to remain eligible for baseload measures even if the landlord does not approve of more comprehensive measures. We note that PPL, for example, provides a tenant household with energy education, baseload items and energy conservation kits, when the tenant household does not receive landlord permission to install program measures. PPL Comments at 8.

The proposed amendment to § 58.8(b) adds language to clarify that landlord contributions are voluntary and that

the lack of landlord contributions may not prohibit eligible tenant households from receiving LIURP. It further clarifies that a public utility is required to document, in writing, conditions relative to the use of voluntary landlord contributions in writing.

As noted above, the proposed § 58.8(c) is intended to make the requirement for a landlord to not raise rent or evict a tenant for a stated period of time after the installation of program measures an optional provision that the public utility could impose. This optional provision is consistent with WAP regulations that require a notarized agreement signed by both the landlord and tenant to ensure that the tenant is current with rents and that during and for 18 months after the completion of WAP services a landlord cannot raise rents or evict a tenant unless it relates to matters not related to the work that was done. It also requires that there be a process in place for landlords and tenants to follow if rent or eviction issues arise after weatherization assistance. See 10 CFR § 440.22(b)(3) (relating to eligible dwelling units). Making this provision optional is also consistent with PPL's comments. PPL supported eliminating mandatory rent and eviction restrictions on landlords to increase LIURP services to tenant households. PPL Comments at 8.

Section 58.9. Program announcement.

This section of the existing regulations requires a public utility to provide targeted communication about LIURP to potentially eligible customers to solicit applications. It also directs a public utility to consider advertising program services through various outlets. Finally, the section directs a public utility to make additional contacts with potentially eligible customers when funding permits. Stakeholder comments to Question No. 3 in the 2016 Secretarial Letter relate to this section.

Question 3: How can public utilities ensure that they are reaching all demographics of the eligible populations in their service territories?

Stakeholder Comments

PA-EEFA asserted that the PUC must ensure LIURP budgets are adequate to meet the needs of customers in specific territories. According to PA-EEFA, there is a wide range of budgets for public utilities with substantially similar levels of confirmed low-income populations. PA-EEFA suggested that the PUC ensure that each public utility has communications laid out in plain language, has a robust limited English proficiency outreach program, and has limited identification requirements. While acknowledging that LIURP should remain focused on targeting high users, PA-EEFA suggested that public utilities should be allowed to accept referrals from CBOs and CSPs. PA-EEFA Comments at 11—14.

OCA stated that the necessary regulatory measure would be to identify reporting requirements to determine how the public utilities are serving the needs of their service territories. OCA Comments at 24. OCA submitted that the means to address all demographics of eligible populations should be a function of public utility practices rather than a function of regulations. OCA supported codifying PA-EEFA's suggestions into regulations, including providing outreach in plain language, ensure meaningful access for non-English households, providing written and oral translations for non-English materials, and accepting referrals from CBOs regardless of high usage. OCA RC at 6.

EAP noted that under the existing LIURP regulations, public utilities are required to prioritize customers with the highest usage and greatest opportunities for bill reductions. EAP Comments at 9.

PGW suggested that mass mailing customers under § 58.9 should be based on the prioritized list in § 58.10 and that follow-up communications should be expanded to encompass other contact methods that are most cost-effective based on that program's design. PGW Comments at 5.

PPL stated that it used several methods to reach eligible customers, with the primary method being CBO partnerships to promote LIURP and program referrals. PPL submitted that § 58.9 should be eliminated as program announcement activities are inherently subject to change. It further submitted that public utilities should address announcement and enrollment activities in their USECPs. PPL Comments at 4, 11.

Proposed Revisions to Section 58.9.

We propose to retitle § 58.9 as "LIURP outreach" (currently "program announcement") to reflect the content more accurately and to remove the duplication with § 58.10.

Reflecting the changing way people access information and the demographics of a public utility's service territory, § 58.9(a) is amended to do both of the following:

- Add additional advertising requirements to a public utility's program activities through a wider range of media outlets and platforms, including social media.

- Add a requirement that a public utility advertise LIURP in languages other than English when census data indicate that 5% or more of the residents of the public utility's service territory are using that language. This is consistent with the customer information provisions in 52 Pa. Code § 56.91(b)(17) (relating to general notice provisions and contents of termination notice).

We propose to remove and reserve § 58.9(a)(1)—(3).

Section 58.9(b) is amended to remove language requiring a public utility to provide a description of its program services and eligibility rules to all residential customers, as this provision has been amended and addressed in § 58.9(a). Section 58.9(b) is also amended to add language removed from existing § 58.9(a)(2) and (3) to require a public utility to make additional attempts to contact eligible customers who have not responded to initial contacts if funding permits.

Section 58.10. Program announcement.

This section of the existing regulations[55] sets forth the criteria that a public utility is required to use to prioritize eligible customers for LIURP. It also requires EDCs to budget for LIURP spending based on different energy accounts (i.e., residential space-heating customers, residential water-heating customers and residential electric baseload customers) based on the prioritization provisions in this section. It further provides that a public utility may spend up to 20% of its LIURP budget on special needs customers. Stakeholder comments to Question No. 12 in the 2016 Secretarial Letter relate to this section.

Question 12: Should the interplay between CAPs and LIURPs be addressed within the context of LIURP regulations? If so, how?

Stakeholder Comments

OCA submitted that a determination of CAP eligibility should automatically result in LIURP eligibility without

[55] The provisions of § 58.10 were amended January 2, 1998, effective January 3, 1998. See 28 Pa.B. 25.

any further application, but CAP participation should not be a prerequisite for LIURP. OCA recommended that public utilities notify CAP participants when they are close to the credit ceiling and begin evaluating them for LIURP. OCA Comments at 25—27, 3; OCA RC at 16-17.

PGW asserted that, while there are some limited CAP-related issues that could be addressed in LIURP regulation, CAP issues are best addressed in a CAP rulemaking. PGW submitted that CAP customers should receive priority in receiving LIURP treatment as using CAP eligibility as a baseline reduces administrative burden and costs for both the public utility and participants by eliminating the need for additional eligibility processes. PGW suggested that the prioritization regulations in § 58.10 should be updated to provide greater flexibility in meeting the goals of targeting the highest usage customers. PGW asserted that the existing regulations lack detail about whether customers must be prioritized individually or whether customers can be prioritized in tiers using statistical analysis.[56] PGW Comments at 6, 12.

EAP submitted that CAP should not be addressed within the framework of LIURP regulations. EAP Comments at 15.

FirstEnergy did not recommend modifying the existing LIURP regulations to address public utilities' CAPs because each program performs a different function. FirstEnergy Comments at 11.

Duquesne submitted that the existing LIURP regulations do not need to incorporate CAP because low-income customers are potentially eligible for LIURP regardless of whether they participate in CAP. Duquesne Comments at 10.

PECO noted that existing regulations do not require CAP participation for LIURP eligibility. Further, PECO contended that the rulemaking should give public utilities the flexibility and autonomy to best achieve LIURP goals. PECO recommended allowing energy burdens (i.e., energy costs as a percentage of income) to be taken into consideration as a key prioritization factor under § 58.10. PECO Comments at 18, 20.

PPL asserted that the most appropriate context to address the link between CAP and LIURP is in a public utility's USECP. PPL submitted that the linkage should not be addressed within the context of the LIURP regulations because each public utility has designed its CAP differently and customer LIURP needs often extend beyond CAP participants. PPL suggested revising the existing LIURP regulations to provide the EDCs with flexibility to serve non-high usage baseload customers. Although PPL agreed that public utilities should target customers with the largest usage and the greatest opportunities for bill reduction, it contended that factors such as the size of the dwelling, the number of occupants, and the end use of public utility service should not play a role in prioritizing services. PPL did not support prioritizing services based on the size of the arrearage or household income. PPL Comments at 9—11; PPL RC at 8.

PA-EEFA recommended addressing the interplay between CAP and LIURP within the existing LIURP regulations. Additionally, PA-EEFA recommended the continued targeting of CAP participants for LIURP services and requiring public utilities to reach out to non-CAP participants for LIURP services and to promote enrollment into CAP. PA-EEFA Comments at 28-29.

[56] PGW proposed amended language for § 58.10 consistent with these recommendations on page 6 of its Comments.

Proposed Revisions to Section 58.10.

This section is currently titled "Program announcement" which is a duplication of § 58.9. The title is also inconsistent with the substance of the section. We propose to retitle the section as "Prioritization of program services" to eliminate the duplication and to reflect the content of the section more accurately.

The terms in this proposed amendment are updated consistent with the proposed definitions in § 58.2, including replacing "program" with "LIURP" when appropriate.

Section 58.10(a)(1) is amended to include CAP shortfall as one of the factors that a public utility is required to consider when prioritizing eligible customers by usage level and to incorporate a new prioritization factor based on the number of consecutive service months a customer resided at a dwelling. Furthermore, amended § 58.10(a)(1) allows public utilities to consider factors that tend to facilitate utility bill reduction when prioritizing eligible customers by opportunities for utility bill reduction.

With respect to the customers prioritized by usage and opportunity for utility bill reduction, § 58.10(a)(2)(i)-(ii) gives first priority to CAP customers with the largest PPAs and in-program arrearage balances and then to non-CAP customers with the largest unpaid balances. "Largest arrearage relative to household income" is derived as a percentage. Priority is given to CAP customers because energy reductions for CAP households decrease costs for both the CAP customer and the ratepayers from whom CAP shortfall costs are recovered.

In our approvals of various public utility-specific USECPs, we have required that all low-income customers, who otherwise meet eligibility requirements, be allowed to participate in LIURP, especially if they have high usage,[57] regardless of CAP participation. We propose adding a new § 58.10(d) that clarifies the prohibition of restricting LIURP participation to customers enrolled in CAPs. Furthermore, we propose a new § 58.10(e) that requires a public utility to document its prioritization protocols in its USECP.

We propose to remove § 58.10(c). We propose to incorporate language removed from § 58.10(c) that allows a public utility to spend a percentage of its LIURP budget on special needs customers into proposed § 58.4(a.2) (relating to special needs customers). That percentage would be increased from 20% to 25%.

Section 58.11. Energy survey

This section of the existing regulations[58] requires a public utility to perform an onsite energy survey to determine if the installation of program measures would be appropriate. This section specifies that a program measure is appropriate if it is not already present or is not performing effectively and when energy savings derived from the installation would result in a payback period of not more than seven or 12 years. There were no Questions in the 2016 Secretarial Letter relative to § 58.11.

Stakeholder Comments

Duquesne recommended reconsideration of the payback periods for LIURP measures under § 58.11. Duquesne

[57] See Peoples 2015—2018 USECP Final Order, Docket No. M-2014-2432515 (order entered December 17, 2015), at 34—37, which rejected a base rate case settlement provision that relied upon CAP/non-CAP determination as an eligibility requirement for LIURP. See also PGW 2017—2020 USECP Final Order, Docket No. M-2016-2542415 (order entered August 3, 2017), at 38—42, which directed PGW to include all known low-income customers when determining LIURP eligibility, regardless of their enrollment status in PGW's CAP.

[58] The provisions of § 58.10 were amended January 2, 1998, effective January 3, 1998. See 28 Pa.B. 25.

stated that any modification should include greater flexibility when determining the appropriate lifetime of a measure for LIURP installation, deferring instead to manufacturer recommendations, or to evaluating LIURP jobs on a whole-project basis instead of individually by measure. Duquesne Comments at 11.

EAP contended that codified payback requirements at § 58.11(a) should be based on a whole job basis where each individual measure is evaluated on an industry standard recommended useful life, or some other measurement. EAP recommended that the PUC avoid uniformity and allow USECPs to remain tailored to each service territory. EAP Comments at 15.

FirstEnergy recommended that the PUC create a working group to address and explore the appropriate length of payback periods under § 58.11. It also recommended that the PUC address whether the current seven to 12-year periods remain appropriate given widespread deployment of LIURP measures and technological advancements made since the regulations were adopted. FirstEnergy Comments at 12.

PPL also recommended flexibility for installing LIURP measures and to include regulations to better define fuel switching. PPL specifically asked that installations not fall under fuel switching when an NGDC or EDC installs electric or natural gas heat in a home which had not used its primary heating source for at least two heating seasons. PPL Comments at 12.

PECO recommended that the life measure should be based on the median number of years that the measure is in place and operable. PECO Comments at 20.

PGW contended that using the seven or 12-year payback period set forth in § 58.11 is detrimental as it limits the type of measures that can be installed, and that requiring shorter payback times discourages public utilities from installing comprehensive energy saving measures that will provide the most impact and long-term benefits. However, PGW would not advocate for the use of a Total Resource Cost (TRC) test[59] in place of the seven or 12-year period as it fails to account for the additional societal benefits. PGW provided proposed amendments to § 58.11 to allow projects to be evaluated for cost-effectiveness based on the total measure package as opposed to individual measures. PGW Comments at 12-13.

PA-EEFA stated that cost effectiveness for measures should be based on the full measure life, not on an arbitrary payback period that artificially biases assessment of cost-effectiveness. PA-EEFA argued that limiting lifetimes for certain measures would unreasonably reduce benefits to low-income ratepayers by excluding cost-effective measures from being installed. They asserted that maximizing benefits to participants at the time they are receiving services decreases the transaction cost per unit of savings. PA-EEFA RC at 7-8.

Proposed Revisions to Section 58.11.

We propose to retitle this section as "Energy audit" (currently "energy survey") consistent with proposed definitions in § 58.2.

Amendments to § 58.11(a) eliminate the provision requiring program measures installed be based on the result of energy savings derived from a simple payback of seven years or less or a 12-year payback criterion for more comprehensive program measures. We propose to replace this criterion with a new provision in § 58.11(d)(2).

We propose to remove and reserve § 58.11(b). The provisions are incorporated into a new § 58.11a (relating to fuel switching).

The proposed § 58.11(c) prohibits a public utility from using the same ESP to conduct an energy audit at a dwelling and to install follow-up program measures determined necessary during that energy audit. ESPs should conduct energy audits impartially without a motivation to benefit financially from the installation of follow-up measures proposed in that energy audit.

The proposed § 58.11(d)(1)-(2) sets out parameters for what an energy audit must determine regarding the appropriateness of installing program measures. Proposed § 58.11(d)(1) clarifies that a program measure is appropriate if it is not already present or is not performing effectively. Section 58.11(d)(2) further clarifies that a program measure is determined to be appropriate if its estimated energy savings derived from the installation of all program measures would exceed its costs over its expected lifetime.

The proposed § 58.11(e) provides flexibility in situations where a program measure may be determined necessary for the long-term health, safety, and comfort levels of dwelling occupants. In those situations, program measures may be installed even if there are no estimated energy savings. This proposal is consistent with § 58.1 that identifies improvement to the health, safety, and comfort levels of LIURP recipients as one of the purposes of a LIURP.

The PUC has previously approved temporary waivers of § 58.11(a) to allow a public utility the flexibility to use a cost/benefit calculation to determine what program measures to include in a LIURP job, rather than the seven-year or 12-year simple payback criteria.[60] Some program measures may reduce a dwelling's energy usage but do not qualify because their payback periods exceed seven to 12 years. As a result, some households do not experience the potential energy savings when a public utility cannot install all appropriate program measures in one comprehensive LIURP job.

Our proposed change is consistent with recommendations from Duquesne, EAP, PGW, and PA-EEFA that § 58.11 should allow greater flexibility when determining the appropriate program measure for LIURP installations. Duquesne Comments at 11, EAP Comments at 15, PGW Comments at 13, and PA-EEFA RC at 7.

Proposed Section 58.11a. Fuel switching.

We propose a new § 58.11a titled "Fuel switching" that provides requirements related to a public utility using LIURP funds for fuel switching between electric and natural gas. Language moved from the existing § 58.11(b) concerning fuel switching within a dual-fuel public utility is incorporated into this section.

The proposed § 58.11a(a) identifies the conditions under which LIURP funds may be used for program measures involving fuel switching. Proposed § 58.11a(a)(1) allows fuel switching within a dual-fuel public utility. Proposed § 58.11a(a)(2) allows fuel switching if a primary heating source is determined to be inoperable, unrepairable or the cost to repair exceeds the cost of replacement and both public utilities agree in writing that fuel

[59] Act 129 defines the TRC test as "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." 66 Pa.C.S. § 2806.1(m).

[60] See, e.g., FirstEnergy 2015—2018 USECP Final Order, Docket Nos. M-2014-2407729, M-2014-2407730, M-2014-2407731, and M-2014-2407728 (order entered May 19, 2015), at 45—49. See also PGW 2017—2020 USECP Order, Docket No. M-2016-2542415 (order entered August 3, 2017), at 50—52.

switching is appropriate. Proposed § 58.11a(b) requires the public utility to document the conditions necessitating fuel switching.

PPL and PA-EEFA supported revising Chapter 58 to better define and address fuel switching. PPL Comments at 12; PA-EEFA Comments at 16-17.

Section 58.12. Incidental repairs.

This section of the existing regulations sets forth the criteria for performing incidental repairs. Stakeholder comments to Question Nos. 6 and 7 in the 2016 Secretarial Letter relate to this section.

Question 6: How can LIURPs best provide for increased health, safety, and comfort levels for participants?

Stakeholder Comments

OCA submitted that a public utility should be permitted to use a percentage of its LIURP budget for the separate categories of health, safety, and incidental expenditures. OCA further submitted that while incidental repairs are specifically defined in the PUC's regulations, the "health and safety" measures referenced in § 58.1 remain undefined. OCA recommended that the PUC provide more guidance on health and safety measures in the regulations. OCA Comments at 27-28.

PGW asserted that "health and safety" concerns are broad and require different levels of treatment and should be assessed on a case-by-case basis. PGW recommended that the regulations clarify whether health and safety measures could be considered "incidental repairs" in § 58.12 if they would allow establishment of weatherization measures. Further, PGW contended that not all health and safety measures should be included in the cost-effectiveness calculation, as this is not LIURP's core responsibility. PGW Comments at 8.

EAP asserted that the costs of health and safety measures "could be prudently recovered by residential ratepayers through LIURP, provided that overall LIURP budgets do not increase or funds not by mandated to be diverted from primary program purposes, and that health and safety measures are not included in cost effectiveness measurement." EAP stated that any health and safety proposal needs to justify the additional administrative costs required to facilitate the coordination and report on the initiative. EAP Comments at 10-11.

FirstEnergy argued that the need and scope of a health and safety budget should be considered within the USECP proceedings, not as part of the LIURP rulemaking. FirstEnergy RC at 7. Because FirstEnergy allocates up to 50% of its seasonal allowance budgets to health and safety repairs that permit installation of energy savings measures, FirstEnergy supported the sustained flexibility to include health and safety spending within the LIURP budgets, which maximizes LIURP participation. FirstEnergy also recommended that a public utility develop partnerships with other agencies and non-profit organizations that specialize in health and safety measures to work with the public utility during the LIURP installation process. FirstEnergy Comments at 8.

PECO reiterated its belief that LIURP funds should be used almost exclusively for usage reduction. However, PECO supported limited use of LIURP funds to address health and safety issues if three limiting factors are addressed. First, PECO submitted that there must be a material usage reduction measure that can only be implemented upon removal of the health and safety concern. Second, PECO suggested the inclusion of a limitation, either on an audit-by-audit or overall project basis, on the percentage of LIURP funds that can be used for such health and safety measures. Third, PECO contended that the PUC should permit public utilities to use a limited amount of LIURP funds on remediation of health and safety issues. Due to varying needs, PECO recommended that the PUC allow public utilities to propose health and safety spending to be completed with LIURP funds in USECP proceedings. PECO Comments 11-12.

PA-EEFA argued that a streamlined, integrated program delivery would potentially "free up" funds to address prevalent health and safety issues, such as a reliance on de facto heating, thus improving flexibility and reducing cost burden. Decisions like repairing a furnace should be resolved in the customer's best interest, using a fuel-neutral approach, and premised on providing energy solutions with the lowest life cycle cost. PA-EEFA noted that energy efficiency programs are to help potential participants facing challenges in adopting energy efficient practices. Public utilities are obligated to provide energy efficiency to low-income customers, so public utilities must address health and safety issues. PA-EEFA stated that it is appropriate for public utilities to resolve health and safety concerns necessary for the delivery of critical energy efficiency services to high use low-income customers to provide service on reasonable terms and conditions and to continue universal service programs like LIURP. PA-EEFA RC at 8-9, 17-18.

OCA supported using a portion of the LIURP budget to address health and safety situations. OCA agreed with PECO that there should be a limit on the amount that could be used for issues such as mold or pest remediation, and that the limit should be based on either an audit-by-audit basis or an overall project percentage. OCA questioned PECO's recommendation about providing health and safety measures which only lead to energy savings, as that requirement would eliminate measures like smoke/carbon monoxide detectors. OCA agreed with PA-EEFA that de facto heating needs to be addressed but suggested that it be handled as a standalone issue in the regulations, so it can address specific measures and direct the NGDCs and EDCs to work together on the initiative. OCA RC at 8-9.

Duquesne asserted that LIURP's main goal should remain energy conservation and could be achieved through better coordination with programs like DCED's Crisis Interface Program. However, Duquesne asserted that setting a predetermined limit (i.e., either dollar amount or percentage of job) to complete incidental, safety, or comfort level measures may also address this issue. Duquesne Comments at 7.

PPL supported the installation of necessary cost-effective health and safety measures but did not want to revise the regulations to provide for rehabilitation or remediation that exceeds the scope of LIURP. PPL asserted that allowing for such services would likely result in fewer customers being served. PPL further argued that it would not be cost-effective for LIURP contractors to train people in providing these services as they would not be provided regularly. PPL Comments at 6.

Question 7: How can LIURPs maximize participation and avoid disqualifications of households due to factors such housing stock conditions?

Stakeholder Comments

OCA submitted that when a public utility evaluates a customer for installation of weatherization benefits, the

main analysis is to determine whether the weatherization measures will be cost-effective given the housing stock conditions. OCA suggested that LIURP service providers be permitted sufficient time to make referrals for assistance and have the repairs completed before the public utility disqualifies a housing unit. Additionally, OCA contended that LIURP service providers should maintain internal program lists to refer housing units to when the necessary remediation is not possible to allow LIURP to move forward. Lastly, OCA submitted that the regulations should ensure that the number of housing units disqualified from LIURP services and the circumstances surrounding disqualifications are recorded. OCA Comments at 28-29. OCA submitted that there must be a determination that weatherization measures will be cost-effective given the condition of the house. OCA stated that LIURP is not a housing rehabilitation program, and agreed with EAP, FirstEnergy, Duquesne, PECO, and PPL that referrals should be made to other agencies and housing programs which are designed to address housing stock repairs and rehabilitation. OCA RC at 9-10.

PGW asserted that it is essential to recognize that LIURP is not a housing program and that it is not the program's purpose to remediate all low-income housing stock in a service territory. While PGW stated that it does not automatically disqualify cases for having a health and safety issue, the extra remediation work may make comprehensive treatment cost-ineffective. Thus, PGW recommended that cost-effectiveness tests be developed in a way that provides case-by-case flexibility. PGW Comments at 9.

EAP, PECO, and Duquesne separately claimed that it is not the public utility's role or within LIURP's jurisdictional scope to address housing stock conditions. EAP Comments at 12, PECO Comments at 13, Duquesne Comments at 8. EAP stated that, where possible, public utilities should partner with other community agencies, such as Habitat for Humanity, to comprehensively address issues. However, EAP maintained that state-designated entities are best equipped to help finance the construction and rehabilitation of affordable rental housing. EAP Comments at 12.

PPL noted that LIURP's purpose is to reduce energy usage and not to repair defective housing conditions. PPL recommended the practice of reducing comprehensive services rather than program disqualification where housing stock prevents the installation of certain measures. When homes are disqualified because of housing stock conditions, PPL recommended that the public utility re-enroll and prioritize the customer once the issue has been resolved. PPL Comments at 6.

FirstEnergy submitted that it is not its practice to disqualify eligible LIURP participants based on housing stock conditions. FirstEnergy reported that, where safety issues exist that cannot be remediated, customers can still qualify for baseload measures, including lighting, refrigerator testing and possible replacement, smart power strips, and water heating measures. Further, where significant remediation or renovation is required, FirstEnergy asserted that its practice is to attempt coordination with other agencies to perform this work. FirstEnergy Comments at 8-9.

PA-EEFA recommended that public utilities accept referrals from outside agencies to identify and engage more eligible customers. PA-EEFA suggested that public utilities try community-level customer recruitment as opposed to the traditional individual-level approach, such as partnering with housing authorities and non-profit housing providers, to facilitate tenant engagement. For multi-family properties, PA-EEFA recommended that LIURPs consider ways to gain access to units to install lighting and water conservation measures that do not necessarily require individual tenants to provide consent. PA-EEFA asserted that integrating natural gas LIURPs, electric LIURPs, and Act 129 will allow program administrators to choose the best-suited funding stream to address the housing stock conditions and reduce disqualifications. PA-EEFA Comments at 19-20.

Duquesne agreed that sometimes repairs must occur for LIURP measures to work appropriately but cautioned against fixing personal property with LIURP funds. Duquesne suggested that this would be a good issue to address in a stakeholder meeting. Duquesne RC at 6-7.

Proposed Revisions to Section 58.12.

We propose to retitle this section as "Incidental repairs and health and safety measures" (currently "incidental repairs") to establish provisions for both incidental repairs and health and safety measures.

The proposed § 58.12(a) requires a public utility to identify in its USECP the criteria used for performing incidental repairs and health and safety measures. Services provided by incidental repairs and health and safety measures would be identified separately in proposed § 58.12(a)(1)-(2).

The proposed § 58.12(b) requires a public utility to set separate allowance limits for incidental repairs and health and safety measures through a USECP proceeding.

The PUC has previously directed public utilities to develop LIURP protocols and allowance limits for incidental repairs and health and safety measures.[61] We recognize that while LIURP is not designed to support major repairs or rehabilitation of dwellings, there are often situations that could justify small repairs or remediation of health hazards to perform more comprehensive weatherization treatments.

The proposed § 58.12(c) establishes requirements under which a public utility may defer a dwelling that does not meet the criteria for incidental repairs or health and safety measures or that exceeds the maximum budget allowance. It also requires a public utility to provide written notification to customers when the dwelling is deferred and require the public utility to track deferred dwellings for a period of at least three years.

The proposed deferral provisions are consistent with DCED's WAP protocols that require agencies to maintain a list of all clients who are deferred, the reason for deferral and the other program they were referred to, if appropriate.[62] Public utilities are not currently required to report deferrals under Chapter 58, and it is unclear how many Pennsylvania households are being disqualified from LIURP based on health or safety conditions, or both, in a residence (e.g., mold, moisture, or structural issues). Updating Chapter 58 to be consistent with DCED's WAP protocols establishes a uniform approach to identifying and tracking low-income dwellings in need of repairs before weatherization work can be provided.

Section 58.13. Usage reduction education.

This section of the existing regulations sets forth the objectives of applicability, funding levels, pilot programs

[61] See, e.g., PECO 2016—2018 USECP Tentative Order, Docket No. M-2015-2507139 (order entered February 25, 2016), at 21-22.

[62] See DCED 2022-2023 DOE State Plan—Health & Safety Plan at 1. https://dced.pa.gov/download/22-23-doe-state-plan-health-safety-plan-final/?wpdmdl=106450&refresh=63f5253bcbf331677010235 (accessed on February 21, 2023).

and program services for public utility energy conservation education. Energy conservation education activities for a public utility are described as a recommendation to include group presentations, workshops, and in-home presentations. Stakeholder comments to Question No. 4 in the 2016 Secretarial Letter relate to this section.

> Question 4: What design would better assist/encourage all low-income customers to conserve energy to reduce their residential energy bills and decrease the incidence and risk of payment delinquencies? How does energy education play a role in behavior change?

Stakeholder Comments

PGW recommended updating § 58.13 to encourage greater flexibility and modernization for usage reduction education. PGW asserted that public utilities should be given discretion to determine whether the costs for such education are justified based on a cost-effectiveness review process. PGW Comments at 6.

EAP noted that education leads to behavior changes towards energy conservation. EAP asserted that customer education best practices can be explored among public utilities in future meetings without codifying any specifics in regulation. EAP Comments at 10. FirstEnergy contended that a LIURP design focused on both the installation of cost-effective LIURP measures and strong energy education promotes future energy savings and reduced arrearages among low-income customers. FirstEnergy Comments at 7. Duquesne asserted that the more a customer understands the relationship between usage and bill increase, the more likely they will manage energy usage and avoid payment delinquencies. Duquesne Comments at 6.

PPL suggested that public utilities have "discretion to require participation in energy education as a prerequisite for LIURP, prior to the initial contractor visit." PPL further suggested that LIURP-funded energy education be offered when a CAP customer has low-usage and/or is an unlikely recipient for direct-install measures. PPL further suggested determining strategies to make educating customers easier and more convenient, such as a video emailed to the customer. PPL supported joint educational and contractor training efforts with weatherization providers when cost-effective. PPL recommended revising § 58.13(d) to include technology as an educational method, leaving room for changes and advancements. PPL Comments at 5, 12. PPL did not support CEO's recommendations to set aside LIURP funds to create energy education and to require customers to participate in education before, during, and after the LIURP process. Citing CEO Comments at 3. PPL stated that education is a critical component but that the public utilities should have flexibility to develop what works best for their customers. PPL cautioned against requiring public utilities to provide non-English languages outreach materials, as the additional costs might not yield results. PPL pointed out that it uses local CBOs to provide referrals and outreach to engage non-English speakers as an alternative. PPL opined that public utilities should have the flexibility to create educational procedures in their USECPs. PPL RC at 4-5.

PECO suggested that public utilities continue to provide education and outreach about LIURP to all identified low-income customers. PECO further suggested coordination of Act 129 services for low-income customers. PECO Comments at 9.

OCA suggested that energy education spending should be targeted at the "remedial in-home visits" found to be effective by Penn State. OCA asserted that energy education and timing play an important role in LIURP, as do remedial in-home visits, an approach reinforced by Penn State's Long-Term Study. OCA supported PPL's recommendation to provide LIURP education to low usage CAP customers as a means of controlling CAP costs and PECO's recommendation to provide education and outreach at community events. OCA Comments at 25-26, OCA RC at 7, citing Long-Term Study of Pennsylvania's Low Income Usage Reduction Program: Analyses and Discussion at 46.

PA-EEFA supported the use of a customized educational approach, whereby the educational information is provided to the customer at the time of measure installation and at a six-month follow-up date, to all household members, in the language used by the household. PA-EEFA Comments at 14-15.

Duquesne agreed with PA-EEFA that education is most effective at the time measures are installed. Duquesne asserted that energy education is an important component, but cautioned that if too burdensome, customers may be dissuaded from using other reduction measures. Duquesne believed that smart meter technology should help behavior change and decrease consumption. Duquesne did not believe any prescriptive mandate was necessary and suggested funds be used to reach more eligible homes for weatherization. Duquesne RC at 5-6.

Proposed Revisions to Section 58.13.

We propose to retitle this section as "Energy conservation education" (currently "usage reduction education") consistent with the proposed definitions in § 58.2. The terms in this section are updated consistent with the proposed definitions in § 58.2, including replacing "program" with "LIURP" when appropriate.

We propose retitling § 58.13(b) as "LIURP budget" (currently "funding level"). This proposed change is consistent with the proposed clarification in § 58.4 regarding the difference between a LIURP budget and a LIURP funding mechanism. The amendments proposed in § 58.13(b) remove the requirement that an energy conservation program that exceeds $150 per recipient be "pilot tested for 1 year" and "be measured for the incremental contribution to energy savings that the education produces in addition to the cost effectiveness of that contribution." Instead, we propose to require that an energy conservation education program that exceeds $150 per recipient be approved through a USECP proceeding, thus providing the opportunity for stakeholder comments, staff review and revisions. Furthermore, it would appear to be unreasonable to require a public utility to measure energy savings based solely on energy conservation education. Education services may include training and materials such as pamphlets, flyers, and presentations intended to change customer behavior toward energy usage. It may not be possible to measure or ascribe future energy savings based solely on the energy conservation education provided.

We propose to remove and reserve § 58.13(c) (relating to pilot programs). Language from this deleted subsection is incorporated into § 58.13a(a) (relating to LIURP pilot programs).

Section 58.13(d) is amended to require a public utility to provide energy conservation education activities in a language or method of communication appropriate to its target audience, providing all LIURP recipients with an equal opportunity to access energy resources. This proposal is consistent with the customer information provisions in 52 Pa. Code § 56.91(b)(17).

Amendments in this section are consistent with the customized educational approach supported by PA-EEFA, which recommend providing energy conservation education to all household members, in the language used by the household. PA-EEFA Comments at 15.

The proposed amendments in § 58.13(d)(3) replace the current term "occupant or owner" with "owner, landlord, or tenant."

A new § 58.13(d)(4), titled "Post-installation education," requires that energy conservation education be provided by phone or in-person to recipients of program measures whose energy usage increased within 12 months post-installation. This provision is consistent with the practices of some public utilities, which provide additional energy conservation education when a customer's usage remains high or continues to increase after receiving LIURP services.[63] Such a practice tends to produce better conservation results.

Proposed Section 58.13a. LIURP pilot programs.

Chapter 58 does not currently provide direction regarding the development and evaluation of LIURP pilot programs. The proposed § 58.13a would provide such directions. These proposed provisions would also codify the long-standing practice of approving proposed LIURP pilot programs through a USECP proceeding.[64]

The proposed § 58.13a, titled "LIURP pilot programs," explains the approval process, timeframes, and reporting requirements related to LIURP pilot programs. This section incorporates and amends language removed from § 58.13(c) regarding the development and evaluation of proposed pilot programs.

Section 58.13a(a) allows a public utility to propose LIURP pilot programs that offer innovative services. The proposed § 58.13a(a)(1)—(4) expands on the types of pilot programs that public utilities may propose, including proposals related to energy conservation education, renewable energy sources, fuel switching, and air conditioning.

The proposed § 58.13a(b) requires a public utility to attempt to coordinate pilot program-related services among other community resources, including EDC and NGDC universal service programs.

The proposed § 58.13a(c)-(d) require that proposed pilot programs be subject to approval in a USECP proceeding and not exceed a maximum timeframe of five years or the expiration of the public utility's current USECP, whichever comes later. Public utilities would also be required to seek PUC approval in a USECP proceeding, to discontinue a pilot program earlier than previously approved or to incorporate an approved pilot program as a regular component of LIURP.

Section 58.14. Program measure installation.

This section of the existing regulations requires a public utility to arrange and install LIURP program measures, if appropriate, after a § 58.11 energy survey (or "energy audit" going forward) is performed. It identifies potential program measure installations for space heating, water heating, and baseload jobs. It also sets forth provisions for LIURP budget expenses incurred through work with other public utilities as well as what may or may not be included in inter-utility billing arrangements. Stakeholder comments to Question No. 9 in the 2016 Secretarial Letter relate to this section.

> Question 9: With the additional energy burdens associated with warm weather, what if any changes are necessary to place a greater emphasis on cooling needs?

Stakeholder Comments

PPL, EAP, FirstEnergy, PECO, and Duquesne separately contended that there was no need to address cooling needs in the LIURP regulations. PPL Comments at 8; EAP Comments at 13; FirstEnergy Comments at 9; PECO Comments at 15; Duquesne Comments at 8. EAP cautioned the PUC against making cooling a primary purpose of LIURP, especially since addressing heating needs also provides summer benefits by way of reducing customer energy needs year-round. EAP Comments at 13. FirstEnergy noted that existing LIURP heating measures, such as duct sealing insulation and air sealing, allow for energy usage reductions during the warm weather months as well. FirstEnergy asserted that a working group should develop revised procedures for "inter-utility coordination" under § 58.14(c) that reflect current coordination procedures between EDCs and NGDCs. FirstEnergy Comments at 9, 12.

OCA and PA-EEFA supported addressing cooling needs in the LIURP regulations. OCA suggested that LIURP be modified to allow for a multi-fuel, whole house approach. OCA Comments at 30. PA-EEFA recommended that opportunities associated with cooling needs should be considered and implemented where improvements can cost-effectively reduce energy use. PA-EEFA also supported a cost-benefit analysis based on specific circumstances and suggested that energy education should extend to information on cooling efficiency when cooling measures are installed. PA-EEFA Comments at 22.

Proposed Revisions to Section 58.14.

The amendments to this section clarify and update the existing provisions regarding the installation of program measures for residential space-heating, water-heating and baseload customers. Section 58.14(a)(2) is reformatted to § 58.14(a)(2)(i)—(iii). Rewiring water heaters to permit billing on a time of day or other off-peak rate schedule is removed as a potential program measure for residential water-heating customers; smart meters and newer technologies have made such measures unnecessary. Section 58.14(a)(3) includes repairing and replacing water heaters that are not the primary heating source for the dwelling as applicable baseload program measures. We propose to remove and reserve existing § 58.14(b) and incorporate it into proposed § 58.14(d). Section 58.14(d) is added and require that program measures installed have a minimum of a one-year warranty covering workmanship and materials. The terms in this section are also updated consistent with the proposed definitions in § 58.2.

We propose to remove and reserve § 58.14(c). Language from this deleted subsection is incorporated into proposed § 58.14a (relating to quality control) and § 58.14c (relating to inter-utility coordination).

Proposed Section 58.14a. Quality control.

We propose to add a new § 58.14a titled "Quality control" that incorporates language moved from the existing § 58.14(b) concerning quality control standards for LIURPs. This new section establishes requirements regarding:

(a) Quality control standards for installation of program measures and evaluation of ESP performance.

[63] See, e.g., Columbia Gas 2019—2021 USECP, Docket No. M-2018-2645401 (filed on November 25, 2019), at 26. See also FirstEnergy 2019—2021 USECP at 23.

[64] See, e.g., Petition of NFG—Approval of Low-Consumption LIURP Pilot Program Order, Docket Nos. P-2019-3008559 and M-2016-2573847 (order entered October 24, 2019). This Order approved NFG's Petition to implement its LC-LIURP Pilot Program.

(b) Frequency of post-installation inspections.

(c) Installation of program measures, post-installation inspections, and documentation in a USECP.

(d) Complaint Process for customers

(e) Who may not perform a post-installation inspection.

(f) Investigating increases in consumption post-installation of program measures.

(g) Documentation required from an ESP.

(h) Documentation retention.

The proposed § 58.14a(a) requires a public utility to establish quality control standards for the installation of program measures. The proposed § 58.14a(b) requires post-installation inspections on at least 10% of completed heating jobs and at least 5% of completed baseload LIURP jobs. The proposed minimum percentage of post-installation inspections per job type is below or consistent with current Commission-approved public utility standards. For example, Columbia Gas requires post-installation inspection on a minimum of 25% of heating jobs[65]; and PECO performs post-installation inspections on all heating jobs and 5% of all baseload jobs.[66] This provision is consistent with DCED's WAP protocols that requires agencies to inspect at least 5% of completed jobs.[67]

In addition, the proposed § 58.14a(a) and (c) require a public utility to document in its USECP (1) the quality control standards used to evaluate the work of the ESP and the performance of the program measures; and (2) the procedures used for installing program measures and performing post-installation inspections. PPL supported addressing quality control in a USECP. PPL RC at 9.

The proposed § 58.14a(d) requires a public utility to establish a complaint process to be followed if a customer is not satisfied with the quality of the work, workmanship or serviceability of the ESP and to document its complaint process in its USECP. This proposed provision is consistent with DCED's WAP protocols that requires an agency to develop a customer complaint process.[68]

The proposed § 58.14a(e) prohibits a public utility from allowing an ESP that installed program measures at a dwelling to perform the post-installation inspection of those program measures.[69] This proposed provision is new to Chapter 58. To ensure post-installation inspections are conducted impartially, a public utility would not be permitted to allow an ESP to conduct the post-installation inspection on its own work at a dwelling. This provision is consistent with DCED's WAP protocols that require post-installation inspections to be conducted by a Quality Control Inspector that had no involvement in the prior installation of program measures at the dwelling.[70] This provision is also consistent with the current practices of some public utilities. PPL permits its ESPs to conduct post-installation inspections if they did not perform the energy audit or install the program measures for the that same job.[71] Duquesne contracts with a third-party ESP to perform independent post-installation inspections.[72] The proposed § 58.14a(e) requires that EDCs and NGDCs follow this practice of separation between the performance of the work and the inspection of the work. The separation would provide greater assurance that a post-installation inspection does not overlook lapses in an ESP's installation work.

The proposed § 58.14a(f)-(g) build on the proposed § 58.14a(a)—(c) to establish requirements for post-installation inspections to validate that installed program measures are working properly.

- Section 58.14a(f) requires a public utility to contact a LIURP recipient whose energy usage increase more than 10% within 12 months post-installation of program measures. A public utility would also be required, if appropriate, to schedule a post-installation inspection to ensure the installed program measures are working properly.

- Section 58.14a(g)(1)-(2) require a public utility to mandate that an ESP documents its post-installation inspection results and its follow up program services, if provided.

- Section 58.14a(h) requires a public utility to retain quality control records for a minimum of four years or until its impact evaluation[73] is completed, whichever is later. This would include documentation and records related to post-installation inspection results, follow-up program services and ESP performance evaluations.

The proposed provisions in this section standardize requirements for performing quality control procedures, evaluating ESP performance and retention of quality control records. Chapter 58 does not currently specify requirements for quality control procedures or record retention. The proposed quality control record retention requirements are consistent with Chapter 56 provisions that require public utilities to preserve written or recorded records related to disputes for a minimum of four years. 52 Pa. Code §§ 58.2, 56.202 and 56.432.

Proposed Section 58.14b. Use of an ESP for program services.

We propose to add a new § 58.14b titled "Use of an ESP for program services" that establishes the use of an ESP to perform program services for a public utility LIURP. A public utility must use qualified ESPs. A qualified ESP is one that has, inter alia, demonstrated experience and effectiveness in the provision of energy efficiency and usage reduction services. Language moved from § 58.7(c) is incorporated into this new section to provide greater clarification to a public utility on the selection of qualified ESPs.

The proposed § 58.14b(a) requires a public utility to select outsourced ESPs through a competitive bid process. The proposed § 58.14b(b)(1)—(4) establish minimum qualifications for ESPs. This proposed provision requires ESPs to have obtained certification in program-related services, to carry appropriate insurance, and to provide a minimum of one-year warranty covering workmanship and materials.

The proposed § 58.14b(c) requires a public utility to contract with more than one ESP, if applicable, and to file and serve a justification if selection is limited to one ESP. Furthermore, the proposed § 58.14b(d) allows a public utility to prioritize contracts with CBOs that meet its ESP qualifications. This proposal is consistent with the requirements of 66 Pa.C.S. §§ 2804(9) and 2203(8) that mandate the PUC to encourage the use of CBOs that have the necessary technical and administrative experi-

[65] See Columbia Gas 2019—2021 USECP at 17.

[66] See PECO 2019—2024 USECP, Docket No. M-2018-3005795(filed on August 18, 2022), at 14. PECO's 2019—2024 USECP may be effective through at least 2028, and PECO identifies it as the "2019—2028" USECP.

[67] See DCED 2022-2023 DOE State Plan—Master File, at 21, 28.

[68] See DCED 2022-2023 DOE State Plan—Master File at 8, 16.

[69] The ESP can and should inspect its own work, but that inspection would not suffice as the required post-installation inspection.

[70] See DCED 2022-2023 DOE State Plan—Master File at 21, 23.

[71] See PPL 2017—2019 USECP, Docket No. M-2016-2554787 (filed on November 6, 2017), at 49.

[72] See Duquesne 2017—2019 USECP, Docket No. M-2016-2534323 (filed on March 12, 2018), at 24.

[73] Under 66 Pa.C.S. §§ 2203(8) and 2804(9), independent impact evaluations are due to the PUC every six years.

ence to be the direct providers of services or programs which reduce energy consumption.

Chapter 58 does not currently specify work quality standards, nor does it require a public utility to establish or to verify credentials for contractors. As other weatherization programs in Pennsylvania move toward higher standards and more consistent work quality and protocols,[74] we propose that LIURPs do the same.

Proposed Section 58.14c. Inter-utility coordination.

We propose to add a new § 58.14c titled "Inter-utility coordination" that incorporates modified language moved from existing § 58.14(c).

The new § 58.14c(a) ensures that a public utility pursues opportunities to coordinate its LIURP services, trainings, outreach, and resources with other public utility LIURPs and assistance programs. This proposal is consistent with the comments of PPL, which supported the opportunity for inter-utility and coordinated training. PPL Comments at 5.

The new § 58.14c(b) clarifies that a single energy audit and post-installation inspection be coordinated when two public utilities are providing program services. We have encouraged public utilities working on the same dwelling to use a single, coordinated, or combined energy audit and/or post-installation inspection, when appropriate.[75]

Proposed language in § 58.14c(c) outlines the obligation for costs and installation of program measures between coordinating public utilities. The new § 58.14c(d) allows a public utility to use up to 1% of its total LIURP budget on costs associated with inter-utility trainings, coordinated trainings, or outreach, or a combination of these efforts.

Coordinating program services and costs between public utilities and assistance programs can and often does result in cost savings and the ability to install more efficiency measures which can lead to deeper savings. As noted above relative to other sections, OCA also supported strengthening coordination to maximize the cost-effectiveness of LIURPs. OCA Comments at 23.

Section 58.15. Program evaluation.

This section of the existing regulations sets forth the responsibility of a public utility to establish procedures for monitoring and evaluating LIURP program results. There were no Questions in the 2016 Secretarial Letter relative to § 58.15.

Stakeholder Comments

PECO recommended that the program evaluation guidelines set forth in § 58.15 be expanded to allow for the use of weather normalization and a comparison group in reviews. PECO Comments at 21. OCA recommended that the regulation require public utilities to record the number of housing units disqualified from LIURP services and the circumstances surrounding that disqualification. OCA Comments at 29.

Proposed Revisions to Section 58.15.

The goal of amending § 58.15 is to create equal and uniform reporting standards for all public utilities. While these proposals build upon the LIURP reporting requirements in 52 Pa. Code §§ 54.75 and 62.5, these proposed amendments are not intended to restrict a public utility's ability to provide additional data or to restrict the PUC from requesting additional information if necessary.

We propose to retitle this section as "LIURP reporting and evaluation" (currently "program evaluation") to more accurately reflect its content. We propose to update the terms in this section to be consistent with the proposed definitions in § 58.2, including replacing "program" with "LIURP" when appropriate.

The proposed amendments to § 58.15 set forth the requirement that public utilities compile and report LIURP data and evaluation findings to the PUC on an annual basis, including the annual LIURP data required by Chapters 54 and 62. We propose to clarify these requirements by associating specific dates with each reporting requirement, in the proposed § 58.15(1)—(4) to state the requirements for each data set.

The proposed § 58.15(1) requires a public utility to report actual LIURP production and spending data for the recently completed program year and projections for the current program year by February 28. The proposed § 58.15(2) requires a public utility to report universal service program data by April 1. These requirements are consistent with the annual residential collection and universal service and energy conservation program reporting requirements under 52 Pa. Code §§ 54.75 and 54.75(2)(ii)(A)(I)-(II) (relating to annual residential collection universal service and energy conservation program reporting requirements) and 52 Pa. Code §§ 62.5(a) and 62.5(a)(2)(ii)(A)(I)-(II) (relating to annual residential collection and universal service and energy conservation program reporting requirements).

The proposed § 58.15(3) requires a public utility to report the statistical data on LIURP jobs completed in the preceding program year by April 30. The proposed § 58.15(4) requires a public utility to report the evaluation data and analysis of LIURP jobs completed, including periods covering the pre-installation and post-installation of program measures, ending within the previous program year by April 30. These proposed subsections align with existing regulations under 52 Pa. Code §§ 54.75(2)(ii)(A)(I) and 62.5(A)(I) that require a public utility to report LIURP data by April 30.

The proposed § 58.15(3)(i) requires a public utility to compile and report the number of LIURP jobs including the number and type of dwelling, the number of each job type completed, the number of fuel-switching jobs, the number of deferred dwellings, the number of previously deferred dwellings that received program services during the program year, the number of inter-utility coordinated LIURP jobs and the number of LIURP jobs coordinated with other weatherization programs. Currently, it is unclear how many dwellings are disqualified for LIURP services annually because of major health or safety issues that are currently outside the scope of LIURP. This proposed amendment calls for deferral data which in turn helps identify the need for addressing health and safety barriers within LIURP. This proposal is also consistent with OCA's recommendation that the regulation be amended to require a public utility to record the number of housing units disqualified from LIURP services and the circumstances surrounding that disqualification. OCA Comments at 29.

The proposed § 58.15(3)(ii)—(iv) require a public utility to report:

- Specific costs associated with LIURP (i.e., administrative, inter-utility training, coordinated training and

[74] For example, DCED's WAP program implemented the Department of Energy's Standard Work Specifications (SWS) new requirements for Quality Control Inspections on July 1, 2015. DCED 2022-2023 DOE State Plan—Master File at 20—23. https://dced.pa.gov/download/22-23-doe-state-plan-master-file-final/?wpdmdl=106451&refresh=63f525989ec701677010328 (accessed on February 23, 2023).

[75] See, e.g., FirstEnergy 2015—2018 USECP Final Order, Docket Nos. M-2014-2407729, M-2014-2407730, M-2014-2407731, and M-2014-2407728 (order entered May 19, 2015), at 51—53.

outreach, health and safety, incidental repairs, special needs customers, energy conservation education).

• Overall percentage of energy savings and energy savings by job type.

• Total number of CAP households and special needs households served by LIURP.

The proposed § 58.15(3)(v) incorporates uniformed reporting requirements for proposed LIURP pilot programs, expanding upon § 58.13a (relating to LIURP pilot programs). Chapter 58 does not currently provide requirements to assist public utilities in reporting pilot program data. The proposed amendment requires a public utility to report the budget and actual spending for each pilot program, the number of jobs completed, the duration of the pilot, and the pilot program's results and measures.

The proposed § 58.15(3)(vi) requires a public utility to provide an explanation if the public utility underspent its annual LIURP budget by more than 10%. This proposal is intended to identify potential trends in LIURP performance or spending that should be addressed before a public utility's next scheduled USECP proceeding. Further, underspending may indicate a need for the public utility to contract with additional ESPs or that the annual budget is not in alignment with the current needs of customers in its service territory.

The proposed § 58.15(4)(i)—(v) require a public utility to report LIURP evaluation data and analysis to the PUC annually by April 30, in compliance with the reporting requirements provided electronically by BCS, and incorporate modified language removed from the existing § 58.15(2), including additional language requiring data related to household demographics.

Section 58.16. Advisory panels.

This section of the existing regulations sets forth the purpose of a public utility to create and maintain a LIURP advisory panel. It further sets provisions for membership, review and the creation of additional advisory panels. There were no Questions in the 2016 Secretarial Letter relative to § 58.16.

Stakeholder Comments

PPL suggested revising § 58.16 to provide more flexibility in the types of meetings that public utilities hold with stakeholders and the rules governing membership participation, including adding references to "stakeholder meetings" and "collaboratives." PPL also suggested allowing flexibility in how such meetings occur, as technology now allows a variety of communication options for groups to participate in such meetings. PPL Comments at 13.

Proposed Revisions to Section 58.16.

We propose to retitle this section as "LIURP advisory committee" (currently "advisory panels") to more accurately reflect its content. This section is amended to provide greater flexibility for a public utility to collaborate with stakeholders by allowing a public utility to combine the functions of its LIURP advisory committee with its existing USAC. This amended section also requires a public utility to meet with stakeholders at least semiannually to consult and receive advice regarding its LIURP services.

All public utilities currently have some form of USAC that meets on at least a semiannually basis to receive universal service program updates, including LIURP, and provide feedback on proposed program initiatives. The PUC has found that USACs provide an opportunity for a public utility to collaborate with stakeholders on outreach, coordination, and implementation issues impacting all universal service programs.[76]

We propose to retitle § 58.16(b) as "Committee participants" (currently "membership"). We propose to remove and reserve the existing §§ 58.16(c)-(d). This change gives a public utility flexibility in establishing membership and responsibilities for its advisory committee. These changes allow for greater collaboration between public utilities and stakeholders when addressing LIURP issues.

We propose to remove and reserve the existing § 58.16(e), regarding the use of existing advisory panels. This provision is addressed by allowing a public utility to use its USAC in place of a LIURP Advisory Committee.

Section 58.17. Regulatory review.

This section of the existing regulations sets forth a requirement that a public utility may not implement or significantly modify a LIURP without PUC approval. There were no Questions in the 2016 Secretarial Letter relative to § 58.17.

Stakeholder Comments

CEO recommended that the regulations be amended to require that a public utility's USECP be submitted to the PUC's Office of Administrative Law Judge for a recommended decision. CEO Comments at 1.

Duquesne, PPL, Peoples, and EAP separately opposed CEO's recommendation and expressed support for maintaining the current USECP review and approval process, which is led by BCS. Duquesne RC at 3-4; PPL RC at 2; Peoples RC at 2; EAP RC at 9-10. Duquesne, PPL, Peoples, and EAP supported the procedure whereby LIURPs are modified through a USECP review process led by the PUC's BCS. Duquesne RC at 3-4; PPL RC at 2; Peoples RC at 2; EAP RC at 9-10.

Proposed Revisions to Section 58.17.

We propose to retitle this section as "Modifications of a LIURP" (currently "regulatory review") to more accurately reflect its content and PUC practice. The existing language in this section provides that a public utility may not implement a LIURP or significantly modify it without "Commission approval." We propose to replace "Commission approval" in the existing regulation with "USECP proceeding" to reflect that a public utility electing to modify its program services or its LIURP budget must do so through a USECP proceeding. This proposed amendment is consistent with our proposed amendments in § 58.4(a.1). We are not proposing to modify the role of BCS in reviewing LIURP or USECP proposals. Duquesne, PPL, Peoples, and EAP supported modifying LIURPs through a USECP review process led by the PUC's BCS. Duquesne RC at 3-4; PPL RC at 2; Peoples RC at 2; EAP RC at 9-10. CEO has not persuaded us that USECP proceedings should be OALJ proceedings.

Section 58.18. Exemptions.

This section of the existing regulations sets forth how a public utility can request LIURP exemptions to the provisions of this Chapter. There were no Questions in the 2016 Secretarial Letter or stakeholder comments received relative to § 58.18.

Proposed Revisions to Section 58.18.

We propose to retitle this section as "Waiver" (currently "exemptions") to refer to provisions under 52 Pa. Code

[76] See, e.g., NFG 2017—2020 USECP Order, Docket No. M-2016-2573847 (order entered March 1, 2018), at 29, 66; and FirstEnergy 2019—2021 USECP Order, Docket Nos. M-2017-2636969, M-2017-2636973, M-2017-2636976, and M-2017-2636978 (order entered May 23, 2019), at 61, OP No. 11.

§ 1.91 (relating to applications for waiver of formal requirements). An EDC or an NGDC has the burden to establish the merits of making a change in or addition to its LIURP, regardless of whether that change or addition is proposed mid-USECP or in conjunction with a periodic USECP review. If the proposed change requests a deviation from the provisions of Chapter 28, the public utility would need to comply with 52 Pa. Code § 1.91 in making the request for the change. This provision supports the proposed amendments throughout Chapter 58 that replace "Commission approval" with "USECP proceeding." The terms in this section are updated consistent with the proposed definitions in § 58.2.

Proposed Section 58.19. Temporary suspension of program services.

We propose to add new § 58.19 regarding temporary suspension of program services that establishes notification and reporting requirements if a public utility suspends or plans to suspend its program services. We recognize that it may be reasonable for a public utility to temporarily suspend all or some of its program services for 30 days or longer due to circumstances beyond the public utility's control. Circumstances may include a public health emergency, such as a natural disaster or a pandemic. Most recently, all public utilities in the Commonwealth suspended in-person program services for several months in 2020 due to the restrictions created by the COVID-19 pandemic.[77] Public utilities offered limited LIURP services during this timeframe and maintained a suspension of in-person services for varying periods of time. However, some suspensions are not the result of highly publicized events and may only affect one public utility or one portion of a public utility's service territory. In light of this experience, we find it reasonable to require a public utility to keep the PUC and the public informed when suspension of program services is necessary and provide monthly status updates until these program services are resumed.

2016 Secretarial Letter Questions 13 and 14

Questions Nos. 13 and 14 in the 2016 Secretarial Letter were not specific to or limited to a particular existing section of the LIURP regulations.

> Question 13: Are there specific "best practices" that would better serve the LIURP objectives which should be standardized across all the utilities? If so, what are they? For example, is there a more optimal and cost-effective method(s) of procuring energy efficiency services so as to maximize energy savings at lower unit costs?

Stakeholder Comments

PPL, FirstEnergy, and Duquesne separately asserted that the existing LIURP regulations already possess an adequate framework. PPL Comments at 9; FirstEnergy Comments at 11; Duquesne Comments at 10.

PPL opined that best practices ought to be addressed in each public utility's USECP. PPL Comments at 9. FirstEnergy also supported addressing best practices regarding public utility-specific issues, including the appropriate measures, budget level parameters, outreach efforts, and agency coordination, in the public utilities' USECP proceedings. FirstEnergy Comments at 11-12. PGW contended that any specific LIURP "best practices" for one public utility would not necessarily apply to other public utilities because they have very different service territories. PGW supported more flexibility in existing regulations to allow each public utility to address its service territory and any ongoing changes in the weatherization industry. PGW Comments at 12. PECO asserted that evaluating all LIURP practices with the following framework will produce the best results: 1) targeting the highest users, 2) providing installation of major measures when cost-effective opportunities are present, and 3) providing effective quality installations. PECO Comments at 19.

Duquesne recommended that the PUC call for a collaborative meeting of interested stakeholders to identify situations where coordination between public utilities as well as state and federal agencies could result in better outcomes for eligible customers. Duquesne Comments at 10.

PECO asserted that evaluating all LIURP practices with the following framework will produce the best results: 1) targeting the highest users, 2) providing installation of major measures when cost-effective opportunities are present, and 3) providing effective quality installations. PECO Comments at 19.

PA-EEFA recommended shifting program focus to an integrated, whole approach that best serves the needs of low-income households and has the greatest impact on reducing arrearages by saving households the most money on overall energy bills. They contended that this change should be undertaken through improved implementation practices and the adoption of reporting protocols and success metrics that emphasize maximizing savings per household. PA-EEFA noted that revising the existing regulations could allow and encourage a broad range of eligible energy saving measures for renters, including refrigeration and air-cooling appliances. They recommended that the PUC consider procurement of program delivery services in which compensation would be based, to a degree, on performance and outcome. PA-EEFA stated that there is precedent to support this approach in Act 129 where public utilities have linked CSP compensation to performance. PA-EEFA Comments at 30-31.

DCED & DEP jointly suggested that regulatory changes focus on ways to minimize barriers to entry and maximize energy efficiency benefits to low-income consumers by improving the quality of work performed, prioritizing the most cost-effective practices, and expanding targeted educational and outreach efforts. They recommended prioritizing high-energy users and coordinating services as much as possible. DEP & DCED Comments at 2.

OCA recommended that the PUC address the following areas in any LIURP regulation revisions: 1) LIURP funding; 2) both single-family homes and multi-family dwellings needs assessments; 3) partnerships; 4) de facto space heating; 5) program eligibility; and 6) LIURP cost-effectiveness. OCA Comments at 4-5. OCA supported modifying the existing regulations to reflect partnerships and coordination with other programs to encourage a whole-house approach for LIURP services. OCA did not support amending the existing regulations to move toward a performance or outcome-based compensation LIURP structure, as this could potentially increase administrative costs. OCA submitted that energy burdens should be taken into consideration when targeting for LIURP and suggested that special funding should be focused toward customers in the deepest poverty (i.e., below 50% FPIG). OCA noted that targeting CAP custom-

[77] On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency (Emergency Proclamation) in response to the COVID-19 pandemic. The proclamation, which has since expired, is available at https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-03/Pennsylvania%2020200306-COVID19-Digital-Proclamation.pdf. (Accessed on March 14, 2023.)

ers with the highest energy burdens would help reduce the amount of CAP credits used and allow for more affordable bills even if the customer exceeds the maximum CAP credit limit. OCA RC at 17—19.

Proposed Considerations

The PUC welcomes stakeholder input in the form of comments or reply comments on the points raised in response to Question 13.

Question 14: The [PUC] welcomes stakeholder input on other LIURP issues or topics.

Stakeholder Comments

EAP, Duquesne, OCA, Peoples, PPL, PA-EEFA, FirstEnergy, and PECO separately supported stakeholder meetings to discuss the proposed regulations to ensure a collaborative effort. EAP Comments at 16; Duquesne RC at 8-9; OCA RC at 17; Peoples RC at 1; PPL RC at 3; PA-EEFA RC at 10-11; PECO RC at 1; PPL RC at 6; Met Ed RC at 5.

PA-EEFA, PPL, and FirstEnergy separately recommended that the PUC establish a working group to address issues such as coordination, training, and de facto heating. PA-EEFA RC at 10-11; PPL Comments at 3-4; FirstEnergy Comments at 12-13. EAP took no position on de facto heating but noted that the commenters did not address the issues of reconnection fees and outstanding arrearages. EAP RC at 10.

PGW reemphasized the need to give a public utility flexibility in its LIURP implementation and claimed that regulations must allow for the adoption of innovative approaches, cost effectiveness for evaluations, and modern equipment and technologies. PGW submitted that the establishment of a stakeholder meeting or working group would be appropriate to address several issues raised by the 2016 Secretarial Letter before the issuance of any proposed regulations. PGW Comments at 14.

Proposed Considerations

The PUC welcomes stakeholder input in the form of comments or reply comments on the points raised in response to Question 14.

Cost Compliance with the Proposed Amendments and Timelines

Stakeholders are requested to address the following topics regarding the proposed amendments:

• Identify the benefits and adverse effects of the proposed amendments, including costs and cost savings. Explain how you arrived at your estimates.

• Quantify the specific costs, savings, or both, to a public utility anticipated to be associated with compliance with the proposed amendments. Your comments should provide details in terms of administering a LIURP. If you wish to address this in terms of the cost of providing LIURP services, that information must be set out separately from the cost of administration. Explain how you arrived at your estimates.

• Explain the additional legal, accounting, consulting, reporting, recordkeeping, and other work that would be involved in complying with the proposed regulations.

Additional Questions

LIURP services are statutorily mandated universal services for low-income customers. Ratepayers pay the cost of LIURP services; these costs are recoverable and non-bypassable. We have seen over the years that the cost of providing usage reduction services for low-income customers is more affordable to ratepayers than writing off high debts in the future.

There are households, some above 150% of the FPIG, that currently carry public utility arrearage balances in excess of $10,000. To the extent that these high arrearages are attributable to conservation issues or health and safety issues, or both, we seek input on potential roles for LIURP in helping to reduce or eliminate further accumulation of arrearages.

With this in mind, we pose the following additional questions for comment in this NOPR:

Question A Has LIURP proven to be an effective means to help customers with extremely high arrearage balances (e.g., $10,000 or more) maintain utility service and pay down this debt?

Question B Would offering LIURP to customers with high utility account balances and unusually high monthly average bills result in a decrease in the cost of collection efforts and a decrease in uncollectible write-offs? If so, what eligibility criteria may apply?

Question C At what arrearage accumulation point or points should a public utility intervene to assist a customer reduce the household's monthly bill to make the bills more affordable before the customer accumulates a balance of $10,000 or greater? What criteria could the public utility use to identify customers who could benefit from LIURP treatment to minimize extremely high balances (e.g., amount of arrearage accumulating, age of housing and ability to provide conservation treatment, amount of average monthly bill compared to ability to pay, history of good faith payments, and the like)? Should the accumulation point be based on household income level or FPIG tier? What should the point or points be?

Question D How can coordination with other programs (e.g., Act 129) help customers with high arrearage balances who are income-ineligible for LIURP?

Question E What other avenues should be considered, in combination with or separate from LIURP, to help public utility customers maintain service if they have arrearage balances near or exceeding $10,000? What programs exist or could be recommended to address the existing arrearage for customers income-eligible for CAPs so as not to burden ratepayers with write-offs of accumulated arrearages in the future?

Conclusion

Having reviewed the comments and reply comments to the 2016 Secretarial Letter, completed another round of periodic USECP proceedings, and revised the PUC's CAP Policy Statement (2020), the PUC has now developed this NOPR to propose revisions to the existing LIURP regulations.

This NOPR will be posted to the PUC's website and served on all parties of record at this proceeding. All interested parties and persons are encouraged to participate in this rulemaking proceeding by filing public comments after this NOPR is published in the *Pennsylvania Bulletin*.

The Law Bureau, with the assistance of the Bureau of Consumer Services, will prepare the requisite supporting documents for the various deliveries of this NOPR pursuant to the Regulatory Review Act. 71 P.S. §§ 745.1—745.14. Thereafter, the Law Bureau will deliver this

NOPR along with the requisite supporting documents to the Office of Attorney General (OAG) and to the Governor's Office of Budget (Budget) for review. Upon receipt of approvals from OAG and from Budget, the Law Bureau will deliver this NOPR along with the requisite supporting documents to the Legislative Standing Committees, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and to the Independent Regulatory Review Commission (IRRC). 71 P.S. § 745.5(a).

Interested parties and persons may file written comments to this NOPR, as it is published in the *Pennsylvania Bulletin*, during the 45-day period following publication in the *Pennsylvania Bulletin*. Reply comments may be filed within the 30-day period following the close of the comment period. Comments and reply comments must reference Docket No. L-2016-2557886. This 75-day period is the "public comment period." The PUC is obligated to forward every filed comment and reply comment received during the public comment period to the Legislative Committees and to IRRC within five days of the PUC's receipt of the timely filed comment or reply comment. 71 P.S. § 745.5(c). Therefore, comments and reply comments filed prior to publication of this NOPR in the *Pennsylvania Bulletin*, that is, before the opening of the public comment period, will be considered premature and must be refiled within the public comment period, that is after publication of the NOPR in the *Pennsylvania Bulletin*.

Accordingly, under sections 501, 1501, 2203, and 2804 of the Public Utility Code (66 Pa.C.S. §§ 501, 1501, 2203, and 2804); section 201 of the act of July 31, 1968, (P.L. 769, No. 240), referred to as the Commonwealth Documents Law (45 P.S. § 1201), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5 (relating to notice of proposed rulemaking required; adoption of regulations; and approval as to legality); section 732-204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)); section 745.5 of the Regulatory Review Act (71 P.S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234 (relating to fiscal note), we are considering adopting proposed changes to existing regulations and proposed new regulations, at 52 Pa. Code §§ 58.1—58.19, as set forth in Annex A, attached hereto;

Therefore,

It Is Ordered That:

1. Upon entry, this Notice of Proposed Rulemaking, consisting of an Order and an Annex A, be posted on the website of the Pennsylvania Public Utility Commission and served on parties of record. The comment period will not open until the Notice of Proposed Rulemaking is published in the *Pennsylvania Bulletin*.

2. The Law Bureau, with the assistance of the Bureau of Consumer Services, shall prepare the requisite supporting documents for the various deliveries of this Notice of Proposed Rulemaking pursuant to the Regulatory Review Act. 71 P.S. §§ 745.1—745.14.

3. The Law Bureau shall deliver this Notice of Proposed Rulemaking along with the requisite supporting documents to the Office of the Attorney General and the Governor's Office of the Budget for review.

4. Upon receipt of approval from the Office of the Attorney General and from the Governor's Office of the Budget, the Law Bureau shall deliver, on a single day, this Notice of Proposed Rulemaking along with the requisite supporting documents to the Legislative Standing Committee, the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and the Independent Regulatory Review Commission. 71 P.S. § 745.5(a).

5. Interested persons may file written comments to this Notice of Proposed Rulemaking, as published in the *Pennsylvania Bulletin*, during the 45-day period following publication in the *Pennsylvania Bulletin*. Reply comments may be filed within the 30-day period following the close of the comment period. The 75 days constitute the public comment period. Comments and reply comments filed during the public comment period will be forwarded by the Commission to the Legislative Committees and the Independent Regulatory Review Commission.

6. Comments and reply comments may be filed electronically through the Public Utility Commission's efiling system,[78] in which case no paper copy needs to be filed with the Secretary provided that the filing is less than 250 pages.[79] If you do not efile, then you are required to mail, preferable by overnight delivery, one original filing, signed and dated, with the Commission's Secretary at: Pennsylvania Public Utility Commission, Commonwealth Keystone Building 2nd Floor, 400 North Street, Harrisburg, PA 17120. Comments and reply comments must reference Docket No. L-2016-2557886. All pages of filed comments and reply comments, with the exception of a cover letter, must be numbered.

7. An electronic copy, in WORD® or WORD®-compatible format, of all filed submissions, comments and reply comments at this docket be provided to Regina Carter, Bureau of Consumer Services, regincarte@pa.gov; Joseph Magee, Bureau of Consumer Services, jmagee@pa.gov; Louise Fink Smith, Esq., Law Bureau, finksmith@pa.gov; Erin Tate, Esq., Law Bureau, etate@pa.gov; Karen Thorne, Regulatory Review Assistant, Law Bureau, kathorne@pa.gov; RA-PCLAW-LIURP@pa.gov; and ra-pcpcregreview@pa.gov.

8. The contact persons for this proceeding are Regina Carter, Bureau of Consumer Services, 717-425-5441, regincarte@pa.gov; and Karen Thorne, Regulatory Review Assistant, Law Bureau, kathorne@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: May 18, 2023

ORDER ENTERED: May 18, 2023

Fiscal Note: 57-340. No fiscal impact; recommends adoption.

(*Editor's Note*: The footnotes in the Statement of Commissioner Kathryn L. Zerfuss are numbered as 1 and 2 on the Commission's web site at www.puc.pa.gov/pcdocs/1785921.pdf and other web sites associated with this Notice of Proposed Rulemaking.)

Statement of Commissioner Kathryn L. Zerfuss

Before the Commission today is the Notice of Proposed Rulemaking (NOPR) that proposes amendments to our existing Low-Income Usage Reduction Program (LIURP) regulations, 52 Pa. Code §§ 58.1—58.18, and seeks comments on these proposed amendments. As the LIURP regulations have not been amended since 1998, now is the appropriate time to revisit our regulations based on the knowledge and experience this Commission, public utilities, customers, and vested partners have gained over the years. As the Commission staff aptly notes, this update to

[78] https://www.puc.pa.gov/efiling/default.aspx

[79] If your filing is 250 pages or more, then you are required to mail one copy of the filing to the Secretary.

the regulations is important to keep up with the changing energy landscape and technology improvements, to ensure proper coordination among Commonwealth energy reduction programs, and to ensure the energy usage reductions are fair, effective, and efficient to the benefit of customers and utilities.

For those unfamiliar with LIURP, it is, simply put, a program sponsored by electric and natural gas public utilities that provides weatherization and energy usage reduction services to help low-income customers. The utilities' LIURPs are significant programs, because consumers can see positive impacts in a variety of ways, such as in energy savings, bill reduction, improved health, safety and comfort levels, arrearage reduction, reduced collection activity, improved bill payment behavior, reduced use of supplemental fuels and secondary heating devices, more affordable low-income housing, reduction in homelessness, and less housing abandonment. For their LIURPs, electric utilities completed 14,176 jobs in 2021, and natural gas utilities completed 3,091 jobs in 2021 to assist low-income customers.[80]

I would like to commend the Law Bureau and the Bureau of Consumer Services for their diligent work in creating such a comprehensive regulatory package, as well as the many commenters whose views enriched these proposed amendments. These comprehensive proposed amendments contain numerous customer benefits as well as various coordinated and stream-lined processes that will assist low-income customers in enrolling in energy reduction programs and enhancing the efficiencies of these programs.

I take this opportunity to highlight some of the many beneficial proposed amendments in this NOPR, as follows:

• Requires a public utility's LIURP to be designed to operate in conjunction with the public utility's other universal service programs and public/private programs that provide energy assistance to the community. Consistent with this proposed amendment, a public utility shall directly, or through an assigned third-party, assist LIURP participants in applying for energy assistance programs, such as LIHEAP, based on income eligibility.

• Requires a public utility to coordinate its LIURP services, trainings, outreach, and resources with other public utility LIURPs and with other energy assistance programs. Coordinated program services may include a single energy audit and post-installation inspection when two public utilities are providing program services to the same dwelling.

• Permits public utilities to increase the spending limit for special needs customers[81] to 25% of the LIURP budget to provide flexibility to serve more special needs customers who are ineligible for a utility's customer assistance program but still need help with their utility bills. This proposal also increases the pool of potential LIURP referrals and provides more opportunities for coordination with other weatherization programs.

• Requires a public utility to carry-over unspent LIURP funds to the LIURP budget for the following program year unless the Commission approves an alternative use of the funds. This will incentivize utilities to use all available LIURP funds each year or seek out more eligible LIURP participants for the following year.

• Requires a public utility to provide targeted outreach and communication about LIURP services and eligibility rules to its customers who appear to be eligible for the program. A public utility shall also consider a wider range of media outlets and platforms, including social media, and shall advertise LIURP in a language or method of communication appropriate to the utility's target audience to ensure potential LIURP recipients have an equal opportunity to access energy resources.

These proposed amendments are consistent with the Commission's recent interests in improving coordination and efficiencies within our public utilities' universal service programs and maximizing the allocated dollars for these programs to the benefit of residential customers.

As part of this proposed rulemaking process, I look forward to receiving comments from all interested parties during the public comment period following publication of this NOPR in the *Pennsylvania Bulletin*. In addition to comments on the proposed amended language in Annex A, the Commission is seeking comments on specific questions, including the ways in which LIURP has helped or can help to reduce or eliminate the accumulation of high public utility arrearage balances (in excess of $10,000) that some households carry. These comments will aid our consideration in crafting final regulations that continue to assist LIURP participants in decreasing energy usage and utility bills, which, in turn, will create cost savings and reduce uncollectible accounts expenses, as well as improve the health, safety, and comfort levels for recipient households.

Date: May 18, 2023

KATHRYN L. ZERFUSS,
Commissioner

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 58. RESIDENTIAL LOW-INCOME USAGE REDUCTION PROGRAMS

§ 58.1. **[Purpose]** **Statement of purpose**.

[This] **The purpose of this** chapter **[requires covered utilities]** **is to require a public utility, as defined in § 58.2 (relating to definitions),** to establish **a** fair, effective and efficient **[energy usage reduction programs]** **Low-Income Usage Reduction Program (LIURP)** for **[their low income]** **its low-income** customers **and special needs customers**. **[The programs are]** **A LIURP that meets the requirements of this chapter is** intended to **[assist low income customers conserve]** **decrease a LIURP participant's** energy **usage** and **[reduce residential energy]** **public utility** bills **or to improve health, safety and comfort levels of household members, or both**. **[The]** **A** reduction in energy **[bills should decrease]** **usage creates cost savings, which can lessen** the incidence and risk of customer payment delinquencies and the attendant **public** utility costs associated with uncollectible accounts expense, collection costs and ar-

[80] See 2021 Report on Universal Service and Collections Performance at 54-55, 56.

[81] The NOPR defines a "special needs customer" as follows:
A customer whose household income is between 151% and 200% of the FPIG with one or more household members who meet any of the following criteria:
• Are age 62 and over or age five and under.
• Need medical equipment.
• Have a disability.
• Are under a protection from abuse order.
• Are otherwise defined as a special needs customer under the public utility's approved USECP.

rearage carrying costs. [**The programs are also intended to reduce the residential demand for electricity and gas and the peak demand for electricity so as to reduce costs related to the purchase of fuel or of power and concomitantly reduce demand which could lead to the need to construct new generating capacity. The programs should also result in improved health, safety and comfort levels for program recipients**] **A reduction in the residential demand for energy can also result in cost reductions related to the purchase of fuel or of power for all customers**.

§ 58.2. Definitions.

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

Administrative costs—Expenses not directly related to the provision of program services. The term may include salaries, fringe benefits and related personnel costs for administration, secretarial and clerical support involved in fiscal activities, planning, personnel administration, and the like; office expenses, such as rents, postage, copying and equipment; and other expenses, such as [**audit**] **quality control** and evaluation expenses, advertising**, training** and insurance.

***BCS—Bureau of Consumer Services*—The Commission bureau with the responsibility to advise the Commission regarding universal service matters including the oversight of the review process of a public utility's universal service programs.**

***CAP—Customer Assistance Program*—A universal service program, as approved by the Commission, that provides payment assistance or pre-program arrearage forgiveness, or both, to a low-income residential customer.**

***CAP shortfall*—The difference between the actual tariff rate for jurisdictional residential energy service and the amount charged on a CAP participant's bill. This term is synonymous with "CAP credits."**

***CARES—Customer assistance and referral evaluation services*—A universal service program, as approved by the Commission, that provides a referral-based approach or a casework approach, or both, to help a payment-troubled customer secure energy assistance funds and other needed services to maximize the customer's ability to pay utility bills.**

***CBO—Community-based organization*—A public or private nonprofit organization that is representative of a community or a significant segment of a community and that works to meet community needs.**

***CNGDO—City natural gas distribution operation*—A collection of real and personal assets used for distributing natural gas to retail gas customers owned by a city or a municipal authority, nonprofit corporation or public corporation formed under 66 Pa.C.S. § 2212(m) (relating to city natural gas distribution operations). Under Section 2212(c), for the purposes of universal service and energy conservation, a CNGDO is subject to the same requirements, policies, and provisions applicable to a NGDC.**

***Commission*—The Pennsylvania Public Utility Commission.**

[***Covered utility*—A jurisdictional electric or gas local distribution utility having sales of natural gas for purposes other than resale exceeding 10 billion cubic feet or sales of electric energy for purposes other than resale exceeding 750 million kilowatt-hours during the preceding calendar year or both.**]

***De facto heating*—Use of a portable heater as the primary heating source when the primary or central heating system is non-functioning or public utility service has been terminated.**

***Dwelling*—A structure being supplied with residential utility service such as a house, apartment, mobile home or single meter multiunit under § 56.2 (relating to definitions).**

***EDC—Electric distribution company*—A public utility providing jurisdictional electric distribution service as defined in 66 Pa.C.S. § 2803 (relating to definitions). This term is synonymous with "electric distribution utility (EDU)," as defined in 66 Pa.C.S. § 1403 (relating to definitions).**

***ESP—Energy service provider*—An organization, contractor, subcontractor or public utility representative responsible for providing program services on behalf of a public utility.**

Eligible customer—A [**low income or special needs customer who is a residential space heating customer, or a residential water heating customer, or a residential high use electric baseload customer of a covered utility**] **space-heating, water-heating, or electric baseload low-income or special needs residential customer who meets the usage threshold and other criteria for a public utility's LIURP, as specified in its USECP**.

Energy [***survey*—An onsite inspection of a residential building for the purpose of determining the most appropriate usage reduction measures**] ***audit*—An initial assessment of a dwelling performed by an ESP to determine the energy usage and appropriate program services**.

***Energy conservation education*—A presentation, workshop, training or instruction in which energy conservation objectives and techniques are explained or presented to a group or an individual.**

***FPIG—Federal Poverty Income Guidelines*—The income levels published annually in the Federal Register by the United States Department of Health and Human Services. This term is synonymous with "Federal poverty level."**

***Hardship fund*—A universal service program, as approved by the Commission, that provides cash assistance to help eligible customers pay public utility debt, restore public utility service or stop a termination of public utility service.**

***Health and safety measure*—A program measure or repair necessary to maintain and protect the physical well-being and comfort of an occupant of a dwelling or an ESP, or both.**

***Impact evaluation*—An evaluation that focuses on the degree to which a universal service program achieves the continuation of utility service to program participants at a reasonable cost level and otherwise meets program goals.**

***Incidental repair*—Work necessary to permit the installation of a program measure including a repair to an existing measure to make it operate more effectively.**

***LIHEAP—Low-Income Home Energy Assistance Program*—A Federally funded program, administered in this Commonwealth by the Department of Human Services, which provides financial assistance grants to low-income households for home energy bills.**

***LIURP—Low-Income Usage Reduction Program*—A universal service program, as approved by the Commission, that provides energy usage reduction services, health, safety and comfort services, conservation education services or a combination of these services for an eligible customer.**

***LIURP advisory committee*—A committee that provides consultation and advice to a public utility regarding program services.**

***LIURP budget*—The expected cost of providing program services in a given program year, as approved in a USECP proceeding.**

***LIURP funding mechanism*—The process and method by which the public utility recovers its costs of providing approved program services.**

***LIURP funds*—The proceeds recovered through a public utility's LIURP funding mechanism to recover LIURP costs.**

***LIURP job*—The act of providing program services to a dwelling by an ESP, which can include an energy audit, installation or modification of program measures, energy conservation education and testing the dwelling upon completion.**

[*Low income*] ***Low-income*** *customer*—A residential **public** utility customer **[with]** **whose annual gross** household income **is** at or below 150% of the **[Federal poverty guidelines]** **FPIG**.

***NGDC—Natural gas distribution company*—A public utility providing jurisdictional natural gas distribution service as defined in 66 Pa.C.S. § 2202 (relating to definitions). This term is synonymous with "natural gas distribution utility (NGDU)," as defined in 66 Pa.C.S. § 1403, and includes a regulated CNGDO for universal service and energy conservation purposes under § 2212(c).**

***Payment-troubled customer*—A customer who has an arrearage or has failed to maintain one or more payment arrangements in a 1-year period.**

Pilot program—A program **[by a covered utility], as approved by the Commission, to operate within the public utility's LIURP,** to develop, implement and evaluate new or innovative methods for achieving **[usage reduction]** **the purposes of this chapter**.

***Post-installation inspection*—An assessment performed by an ESP to determine the efficacy of program measures installed at a dwelling.**

Program **[*measures*—Installations which are designed to reduce energy consumption]** ***measure*—An installation and other work performed on a dwelling under this chapter**.

Program **[*services—Services*]** ***service*—A service** offered or **work** performed by a **[covered]** **public** utility or its **[agent]** **ESP** under this chapter.

***Program year*—The calendar year period beginning January 1 and ending on December 31.**

Public utility—

(1) An EDC with at least 60,000 residential customers.

(2) A NGDC with at least 100,000 residential customers.

Residential **[*high use*]** *electric baseload customer*—A residential customer **[of a covered utility utilizing the]** **using** electric service **[provided by the covered utility for nonspace heating]** **from the EDC for purposes other than space-heating** or **[nonwater heating end uses such as lighting and major and minor appliance usage and utilizing greater than 125% of the usage of the covered utility's average residential baseload customer]** **water-heating**.

Residential **[*space heating*]** ***space-heating*** *customer*—A residential customer **[of the covered utility utilizing]** **using** the electric or **natural** gas service provided by the **[covered]** **public** utility as the primary heating source for the **[customer's residence. The term includes customers with gas furnaces that have historically been used for heating but may not currently be operable]** **dwelling**.

Residential **[*water heating*]** ***water-heating*** *customer*—A residential customer **[of the covered utility utilizing]** **using** the electric or **natural** gas service provided by the **[covered]** **public** utility **to provide water-heating** as the primary **[water]** heating source for the **[customer's residence]** **dwelling**.

Special needs customer—A customer **[having an arrearage with the covered utility and]** whose household income is **[at or below]** **between 151% and** 200% of the **[Federal poverty guidelines]** **FPIG with one or more household members who meet any of the following criteria:**

- **Are 62 years of age or older but under 6 years of age.**
- **Need medical equipment.**
- **Have a disability.**
- **Are under a protection from abuse order.**
- **Are otherwise defined as a special needs customer under the public utility's approved USECP.**

***USAC—Universal service advisory committee*—A group of stakeholders who meet at least semiannually, receive universal service program updates, and provide feedback on proposed public utility USECP initiatives.**

***USECP—Universal service and energy conservation plan*—A documented and Commission-approved plan describing the benefits, policies and procedures related to a public utility's universal service and energy conservation programs.**

***USECP proceeding*—A Commission proceeding to review a proposed public utility USECP or a petition proposing to add or amend provisions within an existing USECP.**

***Universal service programs*—The policies, protections and services that a public utility is required**

to offer under 66 Pa.C.S. §§ 2203(8) and 2804(9) (relating to standards for restructuring of natural gas utility industry; and standards for restructuring of electric industry) to help low-income customers maintain public utility service and conserve energy. This term is synonymous with "universal service and energy conservation programs" and includes payment assistance programs, termination of service protections, energy usage reduction programs and consumer education programs. LIURP, CAP, CARES and Hardship fund are the four mandatory universal service program components of a public utility's USECP; other programs are permissible if approved in a USECP proceeding.

[***Usage reduction education*****—A group or individual presentation or workshop in which usage reduction objectives and techniques are explained.]**

Weatherization**—The process of modifying a dwelling to reduce energy consumption and optimize energy efficiency.**

§ 58.3. Establishment **and maintenance** of **a** residential **[low income usage reduction program]** **LIURP**.

A **[covered]** **public** utility shall establish **and maintain** a **[usage reduction program]** **LIURP** for its **[low income]** **low-income** customers **and special needs customers**.

§ 58.4. **[Program funding]** **LIURP budgets**.

(a) **[** ***General guidelines for gas utilities.*** **Annual funding for a covered natural gas utility's usage reduction program shall be at least .2% of a covered utility's jurisdictional revenues. Covered gas utilities shall submit annual program budgets to the Commission. A covered gas utility will continue to fund its usage reduction program at this level until the Commission acts upon a petition from the utility for a different funding level, or until the Commission reviews the need for program services and revises the funding level through a Commission order that addresses the recovery of program costs in utility rates. Proposed funding revisions that would involve a reduction in program funding shall include public notice found acceptable by the Commission's Bureau of Consumer Services, and the opportunity for public input from affected persons or entities]** **[Reserved]**.

(a.1) ***General*****. A public utility shall propose annual LIURP budgets for the term of a proposed USECP that is filed with the Commission for review and approval. Upon approval of the USECP by the Commission, the public utility shall continue providing program services at the budget level approved in the USECP unless the LIURP budget is revised in a future USECP proceeding.**

(a.2) ***Special needs customers*****. A public utility may spend up to 25% of its annual LIURP budget on eligible special needs customers as defined in § 58.2 (relating to definitions).**

(b) **[** ***General guidelines for electric utilities.*** **A target annual funding level for a covered electric utility is computed at the time of the Commission's initial approval of the utility's proposed program. A covered electric utility shall continue funding the program at that level until the Commission acts upon a petition from the utility for a revised funding level, or until the Commission reviews the need for program services and revises the funding level through a Commission order that addresses the recovery of program costs in utility rates. Proposed funding revisions that would involve a reduction in program funding shall have include public notice found acceptable by the Commission's Bureau of Consumer Services, and the opportunity for public input from affected persons or entities]** **[Reserved]**.

(c) **[** ***Guidelines for revising program funding*** **]** ***Revisions to a LIURP budget*****. A revision to a LIURP budget is accomplished in a USECP proceeding.** A revision to a **[covered]** **public** utility's **[program funding level is to]** **LIURP budget must** be **[computed]** based upon factors **[listed in this section. These factors are]** **including all of** the following:

(1) The estimated number of customers by FPIG levels 0% through 50%, 51% through 100%, 101% through 150% and 151% through 200%.

(2) The number of confirmed low-income customers by FPIG levels 0% through 50%, 51% through 100%, 101% through 150% and 151% through 200%.

(3) The number of special needs customers.

[(1)] **(4)** The number of eligible **confirmed low-income** customers that could be provided **[cost-effective usage reduction]** **program** services. The calculation **[shall]** must take into consideration the number of customer dwellings that have already received, or are not otherwise in need of, **[usage reduction]** **program** services.

(5) The number of eligible special needs customers that could be provided program services. The calculation must take into consideration the number of customer dwellings that have already received, or are not otherwise in need of, program services.

[(2)] **(6)** Expected customer participation rates for eligible customers. Expected participation rates **[shall]** **must** be based on **the number of eligible confirmed low-income customers and** historical participation rates **[when customers have been solicited through approved personal contact methods]**.

[(3)] **(7)** The total expense of providing **[usage reduction]** **program** services, including costs of program measures, **energy** conservation education **and training** expenses and prorated expenses for **[program]** **LIURP** administration.

[(4)] **(8)** A plan for providing program services **to eligible customers** within a **[reasonable period of time]** **proposed timeline**, with consideration given to **[the contractor]** **ESP** capacity necessary for provision of services**, including time and materials,** and the impact on utility rates.

(d) **[** ***Pilot programs*****. Covered utilities are encouraged to propose pilot programs for the development and evaluation of conservation education and other innovative technologies for achieving the purposes of residential low income usage reduction]** **[Reserved]**.

(d.1) *Unspent LIURP funds.* A public utility shall annually reallocate unspent LIURP funds to the LIURP budget for the following program year unless an alternate use is approved by the Commission in a USECP proceeding.

(e) *Recovery of **LIURP** costs.*

(1) **[Program expenses shall] LIURP costs must** be allotted among ratepayers. **[The precise method of allocation between capital and expense accounts shall be determined in future rate proceedings.]**

(2) Recovery of **[program expenses shall] LIURP costs will** be subject to Commission review of the prudence and effectiveness of a **public** utility's administration of its **[low income residential usage reduction program] LIURP**.

(3) The LIURP funding mechanism and the allocation between capital and expense accounts must be determined in a public utility's rate proceeding.

§ 58.5. Administrative costs.

[For programs covered by § 58.4 (relating to program funding),] (a) *LIURP administrative costs.* A public utility may not **spend** more than 15% of **[a covered utility's] its** annual **LIURP** budget **[for its usage reduction program may be spent]** on administrative costs, as defined in § 58.2 (relating to definitions). **[The costs associated with approved pilot programs are exempt from the 15% cap.]**

(b) *LIURP pilot program administrative costs.* The administrative costs associated with an approved pilot program are exempt from the 15% cap on LIURP administrative costs. A public utility shall track the administrative costs of a pilot program separately from the other costs of the pilot program.

§ 58.6. Consultation.

A **[covered] public** utility, when **[making major modifications in] developing a proposal to modify** its **[program] LIURP** design or developing a pilot program, shall consult with persons and entities with experience in the design or administration of usage reduction**, energy efficiency, and weatherization** programs. **[Consultations may typically be with] Persons and entities consulted may also include a USAC, LIURP advisory committee,** past recipients of weatherization services, social service agencies, **and** community groups**[, other utilities with usage reduction programs, and conservation and energy service contractors]**.

§ 58.7. Integration.

(a) **[A covered utility shall coordinate program service with existing resources in the community] [Reserved]**.

(b) **[Mandatory usage reduction programs shall] A LIURP must** be designed to operate in conjunction with the **[covered] public** utility's **[consumer services and collection] other universal service** programs **as defined in § 58.2 (relating to definitions)** and **[relevant public or private programs so that customers experiencing ability-to-pay problems are made aware of the covered utility's usage reduction program and hardship funds] other relevant public or private programs that provide energy assistance or similar assistance to the community**. The **[covered] public** utility shall provide direct assistance **[to low income usage reduction program] or arrange third-party assistance for LIURP** participants **[in making application to the Low Income Home Energy Assistance Program] applying for LIHEAP as defined in § 58.2 and other energy assistance programs, based on income-eligibility**.

(c) **[Mandatory usage reduction programs shall be designed, whenever possible, to provide program services through independent agencies which have demonstrated experience and effectiveness in the administration and provision of program services. In the absence of qualified independent agencies, a covered utility electing not to provide program services directly shall solicit competitive bids for the provision of services by providers of related services, such as construction, architectural or engineering services] [Reserved]**.

§ 58.8. Tenant **household** eligibility.

(a) **[*Program measures*] *Tenant household***. An eligible customer who is a tenant **that resides at a dwelling, as defined in § 58.2 (relating to definitions),** shall have an equal opportunity to **[secure] receive** program services **[if the landlord has granted written permission to the tenant for the installation of program measures, and the landlord agrees, in writing, that rents will not be raised unless the increase is related to matters other than the installation of the usage reduction measures, and the tenant not evicted for a stated period of time at least 12 months after the installation of the program measures, if the tenant complies with ongoing obligations and responsibilities owed the landlord]**.

(1) A tenant household may be eligible for the installation of program measures if the landlord has granted permission to the public utility and the public utility documents the landlord's agreement for the ESP to perform work on the dwelling. A public utility shall provide a copy of the landlord's documented agreement to the tenant household.

(2) If the landlord does not grant permission for the installation of program measures, the tenant household remains eligible for baseload measures and energy conservation education.

(b) *Landlord contributions.* A **[covered] public** utility may seek **voluntary** landlord contributions **[as long as the]. The lack of landlord** contributions **[do] may** not **[prevent] prohibit** an eligible **[customer] tenant household** from receiving program services. **[Contributions] Voluntary contributions** from landlords **[shall] must** be used by the **public** utility **[as supplemental]** to **supplement** its approved **[Residential Low Income Usage Program] LIURP** budget. **The public utility shall document the conditions relative to the use of a voluntary contribution in writing.**

(c) *Optional public utility requirement.* A public utility may require a landlord to agree that rent

will not be raised unless the increase is related to matters other than the installation of the program measures or that the tenant household will not be evicted for a stated period of time after the installation of the program measures unless the tenant household fails to comply with ongoing obligations and responsibilities owed the landlord.

§ 58.9. **[Program announcement]** **LIURP outreach**.

(a) **[A covered utility shall provide notice of program activities as follows:]** **A public utility shall, at least annually, review its customer records to identify customers who appear to be eligible for LIURP and provide a targeted communication with a description of program services and eligibility rules to each customer identified through this procedure so as to solicit applications for consideration of program services. A copy of this notice must also be sent to publicly and privately funded agencies which assist low-income customers within the public utility's service territory. A public utility shall also consider providing public service announcements regarding its LIURP in media outlet sources, such as print, broadcast and social media platforms. The public utility shall additionally advertise its LIURP in a language other than English when census data indicate that 5% or more of the residents of the public utility's service territory are using the other language.**

(1) **[The utility shall, at least annually, review its customer records to identify customers who appear to be eligible for low income usage reduction service. The utility shall then provide a targeted mass mailing to each customer identified through this procedure so as to solicit applications for consideration of program services. A copy of this notice shall also be sent to publicly and privately funded agencies which assist low income customers within the covered utility's service territory. A covered utility shall also consider providing public service announcements regarding its low income usage reduction program in local newspapers and on local radio and television]** **[Reserved]**.

(2) **[If available program resources exceed initial customer response, the targeted mass mailing shall be followed by a personalized letter to customers who did not respond to the mass mailing]** **[Reserved]**.

(3) **[If available program resources still exceed customer response, personal contact should be made with customers who have not responded to earlier program announcements]** **[Reserved]**.

(b) If, after implementing notice requirements of subsection (a), additional funding resources remain, **[a covered utility shall send each of its residential customers notice of its usage reduction program along with a description of program services, eligibility rules and how customers may be considered for program services]** **the public utility shall attempt to make additional contact with eligible customers who have not responded to earlier LIURP outreach announcements.**

§ 58.10. **[Program announcement]** **Prioritization of program services**.

(a) **[Priority for receipt of program services shall be determined as follows:]** **A public utility shall prioritize the offering of program services to eligible customers in the following order:**

(1) Among eligible customers, those with the largest **energy** usage and greatest opportunities for **utility** bill reductions relative to the cost of providing program services, **including CAP shortfall,** shall **[receive]** **be offered** services first. When prioritizing eligible customers by usage level, several factors **[shall]** **must** be considered when feasible. These factors include: the size of the dwelling, the number of occupants**, the number of consecutive service months at the dwelling** and the end uses of the utility service. When prioritizing eligible customers by opportunities for **utility** bill reductions, **[utility rate factors which may tend to limit (for example, declining block rates) or facilitate, for example, time-of-day rates or heating rates, bill reductions somewhat independently of absolute usage levels should be considered]** **a public utility may also consider factors that tend to facilitate utility bill reductions**.

(2) Among customers with the same standing with respect to paragraph (1), **[those with the greatest arrearages shall receive services first. When feasible,]** priority should be given to **[customers with the largest arrearage relative to their income; for example, arrearage as a percentage of income]** **customers in the following sequence:**

(i) Customers in CAP with the largest preprogram and in-program arrearage as a percentage of their household income.

(ii) Non-CAP customers with the largest arrearage as a percentage of household income.

(3) Among the customers with the same standing with respect to paragraph (2), those with incomes **[which place them farthest below the maximum eligibility level]** **at the lowest FPIG level** shall **[receive]** **be offered program** services first.

(b) **[Covered electric utilities]** **An EDC** shall use the **[guidelines outlined]** **prioritization provisions** in this section to determine the amount of **its** annual **[program funding]** **LIURP budget** to be **[budgeted]** **allocated** for **[usage reduction]** **program** services available to residential **electric** **[space heating,]** **space-heating, electric** residential **[water heating]** **water-heating** customers and residential **[high-use]** electric baseload customers.

(c) **[A covered utility may spend up to 20% of its annual program budget on eligible special needs customers as defined in § 58.2 (relating to definitions)]** **[Reserved]**.

(d) A public utility may not restrict participation in LIURP to customers enrolled in a CAP. If a customer is CAP-eligible, participation in CAP must be encouraged but not required to receive program services.

(e) A public utility shall document its prioritization protocols in its USECP.

§ 58.11. Energy **[survey]** **audit**.

(a) If **[an]** **a LIURP** applicant is eligible to receive program services, **the public utility shall arrange for** an **[onsite]** energy **[survey shall]** **audit to** be performed **by an ESP** to determine if the installation of program measures **or if the provision of other program services or if both** would be appropriate. **[The installation of a program measure is considered appropriate if it is not already present and performing effectively and when the energy savings derived from the installation will result in a simple payback of 7 years or less. A 12-year simple payback criterion shall be utilized for the installation of side wall insulation, attic insulation, space heating system replacement, water heater replacements, and refrigerator replacement when the expected lifetime of the measure exceeds the payback period.]**

(b) **[Program funds may not be used for measures that involve fuel switching between Commission regulated utilities. This stipulation does not apply to fuel switching within a dual-fuel utility]** **[Reserved]**.

(c) A public utility may not use the same ESP that performed an energy audit at a dwelling to install the program measures determined appropriate by the energy audit at the same dwelling.

(d) To evaluate whether the installation of program measures on a dwelling are appropriate, the energy audit must determine both:

(1) Whether a program measure is not already present or is not performing effectively.

(2) Whether the total estimated energy savings would exceed the cost of installation of all program measures over the expected lifetime of those program measures.

(e) Notwithstanding subsection (d), a public utility may determine that providing a program measure is necessary for the long-term health, safety and comfort levels for the occupants regardless of the estimated energy savings.

(*Editor's Note*: Section 58.11a is proposed to be added and is printed in regular type to enhance readability.)

§ 58.11a. Fuel switching.

(a) LIURP funds may be used for program measures that involve fuel switching between electric and natural gas under either of the following conditions:

(1) When the public utility provides both electric and natural gas utility service to the LIURP participant.

(2) If the primary heating source provided by another public utility is determined to be inoperable or unrepairable or if the cost to repair would exceed the cost of replacement and both public utilities agree in writing that fuel switching is appropriate.

(b) The public utility shall document these conditions.

§ 58.12. Incidental repairs **and health and safety measures**.

[Expenditures on program measures may include incidental repairs to the dwelling necessary to permit proper installation of the program measures or repairs to existing weatherization measures which are needed to make those measures operate effectively.]

(a) *Criteria and services*. A public utility shall identify in its USECP the criteria used for performing incidental repairs and health and safety measures.

(1) *Incidental repairs*. Expenditures on program measures may include incidental repairs to the dwelling needed to make those program measures operate effectively.

(2) *Health and safety measures*. These measures may include installing smoke alarms or carbon monoxide detectors, performing combustion testing and identifying and remediating potential hazards such as knob and tube wiring, mold, asbestos and moisture.

(b) *Allowances*. Incidental repairs and health and safety measures must have separate allowance limits, approved through a USECP proceeding.

(c) *Deferral*. A public utility may defer a dwelling due to health, safety and structural problems that either do not meet the criteria or exceed the maximum budget allowances for incidental repairs or health and safety measures.

(1) If deferral is necessary, the public utility shall inform the customer in writing and describe the conditions that must be met for program services to be installed.

(2) A public utility shall track and maintain a list of dwellings deferred within the past 3 years. This information must be reported under § 58.15 (relating to LIURP reporting and evaluation).

§ 58.13. **[Usage reduction]** **Energy conservation** education.

(a) *Applicability*. A **[covered]** **public** utility shall provide **[usage reduction]** **energy conservation** education services to **[program]** **LIURP** recipients so that maximum energy savings can be derived from the installation of program measures and through the modification of energy-related behavior including water consumption. **[Usage reduction]** **Energy conservation** education should also address regular utility bill payment behavior and the **[covered]** **public** utility shall provide direct assistance to **[low income usage reduction program recipients]** **each customer who receives program services** in making application to secure available energy assistance funds.

(b) **[*Funding level*. Expenditures for usage reduction]** ***LIURP Budget*. The portion of the LIURP budget allocated for energy conservation** education services **[shall]** **must** be sufficient to provide these services to each customer who receives other program services. **[Usage reduction]** **Energy conservation** education programs that have average costs which exceed $150 per program recipient household **[are to be pilot tested for 1 year during which the program will be measured for the incremental contribution to energy savings that the usage reduction education produces and the cost-effectiveness of that contribution]** **must be submitted for review and approval through a USECP proceeding**.

(c) **[*Pilot programs*. The Commission encourages covered utilities to pilot test and evaluate innovative usage reduction education approaches. Pilot programs are also encouraged that evaluate the**

incremental energy savings of usage reduction programs that incorporate an education component as compared to programs that do not incorporate an education component] [Reserved].

(d) *Program services*. The **[usage reduction]** **energy conservation** education services described in this chapter include activities designed to produce voluntary conservation of energy on the part of eligible customers. **A public utility shall take reasonable steps to provide energy conservation education activities in the language or the method of communication appropriate to its target audience.** The activities **[shall]** **must** include**[, but need not be restricted to,]** **all of** the following:

(1) *Group presentations*. Meetings involving recipients of program measures and other customers at which **energy** conservation objectives are explained and possible **[conservation]** **program** measures are described and, when appropriate, demonstrated.

(2) *Workshops*. Group presentations at which, in addition to receiving explanations of **energy** conservation objectives, recipients of program measures and other customers are taught to install selected program measures.

(3) *In-home presentations*. Consultations held in the dwelling between a person supplying **energy** conservation education services and the **[occupant or owner]** **owner, landlord or tenant** of the dwelling. The presentations may include the explanation of **energy** conservation objectives, the participation of the **[owner or occupant]** **owner, landlord or tenant** in the installation of selected program measures or other activities designed to produce voluntary reductions in energy use **[by the owner or occupant]**.

(4) *Post-installation education*. Energy conservation education must be provided by phone or in-person to recipients of program measures whose energy usage has increased 12 months post-installation.

(*Editor's Note*: Section 58.13a is proposed to be added and is printed in regular type to enhance readability.)

§ 58.13a. LIURP pilot programs.

(a) Public utilities may propose LIURP pilot programs that offer innovative services that may include any of the following:

(1) Energy conservation education.

(2) Renewable energy sources.

(3) Fuel switching.

(4) Air conditioning.

(b) A public utility shall attempt to coordinate pilot program-related services among EDC and NGDC universal service programs and other community resources.

(c) A public utility shall seek approval through a USECP proceeding before establishing or changing a pilot program, discontinuing a pilot program early or incorporating the provisions of a pilot program as a regular component of its LIURP.

(d) The duration of a pilot program must not exceed 5 years or continue after the expiration of the public utility's current USECP, whichever comes later.

§ 58.14. Program measure installation.

(a) **[*Installation.*]** Based on the results of the energy **[survey]** **audit** conducted under § 58.11 (relating to energy **[survey]** **audit**), a **[covered]** **public** utility shall install or arrange for the installation of **[the following]** applicable program measures designed to reduce **[energy]** **utility** bills, usage or demand for **[space heating, water heating]** **space-heating, water-heating** and baseload end uses **which may include any of the following**:

(1) For residential **[space heating]** **space-heating** customers, applicable program measures may include the installation of insulation, furnace replacement or furnace efficiency modifications, **[clock]** **programmable** thermostats, infiltration measures designed to reduce the flow of air through the building envelope or the repair or replacement of chimneys**, windows, exterior doors** and service lines.

(2) For residential **[water heating]** **water-heating** customers, program measures may include **[the installation of control devices on water heaters or other major appliances, rewiring to permit billing on a time of day or other off-peak rate schedule, the installation of water heater and pipe insulation and devices reducing the flow of hot water in showers, faucets or other equipment]** **any of the following:**

(i) Installation of control devices on water heaters or other major appliances.

(ii) Installation, repair, or replacement of water heater insulation and pipe insulation.

(iii) Installation of devices reducing the flow of hot water in showers, faucets or other equipment.

(3) For residential baseload customers, applicable program measures may include lighting efficiency modifications, refrigeration replacements or efficiency improvements, **repairing or replacing water heaters which do not provide primary heating for the dwelling,** air conditioner **installations or** replacements or efficiency improvements and other major appliance replacements, retrofits or efficiency improvements.

(b) **[*Quality control.* A covered utility shall establish effective quality control guidelines and procedures for the installation of program measures. When a contractor is utilized, the covered utility shall schedule post-installation inspections and require a warranty covering workmanship]** **[Reserved]**.

(c) **[*Inter-utility coordination.* Customers of covered gas utilities and covered electric utilities shall have coordinated provision of comprehensive program services.**

(1) When providing program services a covered gas utility shall address usage of electricity provided by a covered utility through the provision of electric usage reduction education, the installation of efficient lightbulbs, where appropriate, the installation of electric water heater and hot water pipe insulation where the equipment is in unheated areas and the installation of devices to reduce the flow of hot water in showers and faucets.

(2) When providing program services, a covered electric utility shall address usage of gas provided

by a covered utility through the provision of gas usage reduction education, the installation of gas water heater and hot water pipe insulation where the equipment is in unheated areas and the installation of devices to reduce the flow of hot water in showers and faucets.

(3) Covered electric utilities should arrange for the bulk purchase of efficient lightbulbs at their own expense and the distribution of the lightbulbs to covered gas utilities or the gas utilities' program contractors that are providing program services in the electric utility service territory.

(4) A covered utility may choose to absorb in its program budget the labor and materials cost for the water heating treatments they provide under this section. An electric utility choosing not to absorb the costs may choose to bill the covered gas utility for the electric utility's cost of providing gas water heating treatments. Similarly, a gas utility choosing not to absorb the costs may choose to bill the covered electric utility for the gas utility's cost of providing electric water heater treatments. Inter-utility billing arrangements shall be stated in a contract between the two utilities which specifies costs to be covered and measures to be installed.

(5) Conservation education costs incurred as a result of this section are not to be included in inter-utility billing arrangements.

(6) Covered electric utilities shall provide training at their own expense to covered gas utility contractors and inspectors regarding the installation of electric hot water measures and the determination of appropriate installations for efficient lightbulbs. Covered gas utilities shall provide training at their own expense to covered electric utility contractors and inspectors regarding the installation of gas hot water measures.

(7) Covered utilities are not required to track or report energy usage data associated with conservation education provided or measures installed under this section] **[Reserved]**.

(d) A public utility shall warranty program measures installed in a dwelling for a minimum of 1-year covering labor and materials.

(*Editor's Note*: Sections 54.14a—54.14c are proposed to be added and are printed in regular type to enhance readability.)

§ 58.14a. Quality control.

(a) A public utility shall establish quality control standards for the installation of program measures and shall document in its USECP the quality control standards that it is using to evaluate both the work of the ESP and the performance of the program measures.

(b) A public utility shall schedule post-installation inspections on a minimum of 10% of completed full cost space-heating and water-heating jobs and a minimum of 5% of baseload jobs for each ESP performing such program measures.

(c) A public utility shall establish procedures for the installation of program measures and the post-installation inspections and shall document them in its USECP.

(d) A public utility shall establish a process for a customer to file a complaint about the quality of work, workmanship or serviceability of the ESP and shall document the complaint process in its USECP.

(e) A public utility may not use the ESP that installs program measures at a dwelling to conduct the post-installation inspection of those program measures.

(f) When energy usage by a recipient of program measures increases by more than 10% within the first 12 months post-installation, the public utility shall contact the recipient to determine the reason for increase in energy usage. If the public utility cannot substantiate the reason for the increase in energy usage, the public utility shall schedule a follow-up inspection to confirm the program measures are working properly.

(g) A public utility shall ensure that an ESP documents each of the following:

(1) Post-installation inspection results.

(2) Follow-up program services if provided.

(h) A public utility shall retain quality control documentation for a minimum of 4 years or until the impact evaluation is completed, whichever is later.

§ 58.14b. Use of an ESP for program services.

(a) A public utility electing not to provide program services directly shall use qualified ESPs selected through a competitive bidding process.

(b) Third-party ESP qualifications must include, at least, the following:

(1) Demonstrated experience and effectiveness in the administration and provision of energy efficiency and usage reduction services.

(2) Certification, as appropriate to the program services to be rendered, by an accredited certifying entity.

(3) Proof of appropriate and sufficient insurance, as determined by the public utility.

(4) Attestation that workmanship and materials will be covered under a minimum 1-year warranty.

(c) A public utility which outsources program services shall contract with multiple ESPs if possible and shall file and serve a justification if selection is limited to one ESP.

(d) A public utility may prioritize contracting with CBOs that meet its ESP qualifications.

§ 58.14c. Inter-utility coordination.

(a) A public utility shall pursue coordination of its program-related services, trainings, outreach and resources with other public utilities LIURPs and with other energy assistance programs.

(b) Coordinated program services may include an energy audit and post-installation inspection.

(c) Inter-utility billing arrangements must be stated in a contract between coordinating public utilities. The contract must specify costs to be covered and program measures to be installed under this section. A public utility may choose to absorb in its LIURP budget the labor and materials cost for the coordinated program measures it provides.

(d) Costs associated with inter-utility trainings and coordinated trainings or outreach may not exceed 1% of the public utility's total LIURP budget, annually.

§ 58.15. **[Program]** **LIURP reporting and** evaluation.

[A covered utility shall be responsible for the ongoing evaluation of its program. Evaluation shall

include establishing procedures for monitoring program results and evaluating program effectiveness. Procedures shall include the following:

(1) Compiling statistical data concerning:

(i) The number of homes weatherized.

(ii) The itemized cost of conservation measures installed.

(iii) The total cost per home in terms of materials and labor.

(iv) The types of housing structures weatherized

(v) Energy consumption.

(vi) Program recipient demographics.

(vii) Program recipient utility bills and account balances.

(viii) Program recipient utility payments.

(2) Evaluating the energy savings and load management impacts of program services; changes in customer bills, payment behavior and account balances; and the overall quality of program services and steps being taken to improve program performance. Utilities should at least annually assess the cost-effectiveness of weatherization contractors utilized in providing program services and incorporate this information into program management decisions.

(3) Reporting annually to the Commission regarding the findings of this evaluation.]

A public utility shall be responsible for the ongoing reporting and evaluation of its LIURP, including compiling and reporting information requested by the Commission on an annual basis. At a minimum, the following data and analyses regarding its LIURP must be provided:

(1) Actual LIURP production and spending data for the recently completed program year and projections for the current program year by February 28, consistent with §§ 54.75 and 62.5 (relating to annual residential collection and universal service and energy conservation program reporting requirements; and annual residential collection and universal service and energy conservation program reporting requirements).

(2) Universal service program data by April 1, consistent with §§ 54.75 and 62.5.

(3) Statistical data on LIURP jobs completed in the preceding program year by April 30, including:

(i) The number of LIURP jobs including the number and type of dwelling, the number of each job type completed, the number of fuel-switching jobs, the number of deferred dwellings, the number of previously deferred dwellings that received program services during the program year, the number of inter-utility coordinated LIURP jobs and the number of LIURP jobs coordinated with other weatherization programs.

(ii) The total LIURP costs including, material and labor costs of measures installed, administrative costs, inter-utility trainings, coordinated trainings and outreach, health and safety, incidental repairs, energy conservation education and cost to serve special needs customers.

(iii) Overall percent of energy usage reduction and energy usage reduction by job type.

(iv) The total number of CAP households and number of special needs households.

(v) The budget and actual spending for each LIURP pilot program, number of jobs by job type, duration of the pilot, results and measures implemented through the pilot.

(vi) An explanation if more than 10% of the annual LIURP budget remains unspent.

(4) Evaluation data and analysis of LIURP jobs by April 30, including periods covering preinstallation and post-installation of program measures, ending in the preceding program year. The evaluation data and analysis must be submitted in compliance with the reporting instructions provided to public utilities electronically by the Commission's Bureau of Consumer Services each year and include all of the following information, broken out by job type:

(i) Energy savings and load management impacts of program services.

(ii) Changes in customer utility bills.

(iii) Payment behavior and account balances.

(iv) Household demographic data at the time program measures were installed.

(v) Assessment of the cost-effectiveness of ESPs used in providing program services and how the ESPs are meeting quality control standards. The public utility shall identify how this information is incorporated into LIURP management decisions.

§ 58.16. [Advisory panels] LIURP advisory committee.

(a) [*Creation.* A covered] A public utility shall create and maintain a [Usage Reduction Program Advisory Panel to provide consultation and advice to the company regarding usage reduction services] LIURP advisory committee or a USAC that meets at least semiannually with stakeholders to consult on program services.

(b) [*Membership.* No more than one representative from an organization or group may serve on a company's advisory panel. Membership] Participants of a public utility's [consumer advisory panel] LIURP advisory committee or USAC may include:

(1) Recipients of program measures and representatives from social service agencies, from community groups and from agencies or companies which administer or install program measures.

(2) Representatives from other groups or agencies which may be able to offer reasonable advice regarding [usage reduction programs and] program services.

(c) [*Review.* The advisory panel shall be provided with usage reduction program plans and proposed changes at least 15 days prior to the submission of plans for approval by the Commission. The panel shall report comments and exceptions to plans to the covered utility which shall provide the reports to the Commission in conjunction with the submission of the proposed plan] [Reserved].

(d) **[*Creation of additional advisory panels.* A covered utility may create more than one advisory panel when the size of the service territory or other considerations warrant]** **[Reserved]**.

(e) **[*Existing advisory panels.* A covered utility may use an existing customer advisory panel to satisfy this section when the membership of the panel can reasonably be expected to provide effective consultation and advice regarding usage reduction programs]** **[Reserved]**.

§ 58.17. **[Regulatory review]** **Modifications of a LIURP**.

A **[covered]** **public** utility **[may not implement a required usage reduction program, nor subsequently significantly]** **shall establish or subsequently** modify **[a program approved under this chapter until the utility has received Commission approval for the proposal]** **its program services and LIURP budget through a USECP proceeding**.

§ 58.18. **[Exemptions]** **Waiver**.

A **[covered]** **public** utility alleging special circumstances may petition the Commission **[exempt its required usage reduction program from]** **through a USECP proceeding to waive a provision in** this chapter**, under § 1.91 (relating to applications for waiver of formal requirements)**.

(*Editor's Note*: Section 58.19 is proposed to be added and is printed in regular type to enhance readability.)

§ 58.19. Temporary suspension of program services.

(a) A public utility shall notify the Commission at its current USECP docket if it needs to suspend all or part of its program services for 30 days or longer. Notice must be filed and served prior to suspension of program services or within 5 days after suspension of program services if prior notice was not possible. The notice must include the reason for suspension and the estimated timeline for resumption of program services.

(b) A public utility that has suspended its program services shall file and serve monthly status updates at its current USECP docket if the suspension of program services exceeds 30 days. The status updates must include an estimated timeline for resumption of program services.

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DEPARTMENT OF HUMAN SERVICES

[55 PA. CODE CHS. 1101, 1121, 1141, 1142 AND 1144]

Covered Outpatient Drugs

Statutory Authority

Notice is hereby given that the Department of Human Services (Department) proposes to amend the regulations set forth in Annex A under the authority of sections 201(2) and 403.1(a)(4) of the Human Services Code (62 P.S. §§ 201(2) and 403.1(a)(4)).

Purpose of Regulation

The purpose of this proposed rulemaking is to amend the current regulations in Chapter 1121 (relating to pharmaceutical services), by updating the payment methodology for pharmaceutical services to reflect the payment methodology approved by the Centers for Medicare & Medicaid Services (CMS) to comply with the Final Rule "Medicaid Program; Covered Outpatient Drugs; Final Rule," (Final Rule) published at 81 FR 5169 (February 1, 2016) (amending 42 CFR Part 447 (relating to payments for services)). The Department is also making technical corrections. These technical corrections amend the current regulations in Chapter 1101 (relating to general provisions) to add diabetic supplies, opioid overdose agents and immunizations to the list of services excluded from copayments. This proposed rulemaking also amends Chapters 1121, 1141, 1142 and 1144 to recognize the prescriptive and dispensing authority of certified nurse practitioners (CRNP) and midwives and to specify the payment methodology for pharmaceutical services dispensed by a prescribing provider. Finally, this proposed rulemaking amends Chapter 1121 to reflect advances in information technology that increase administrative and operational efficiencies consistent with industry standards including recognizing electronic prescribing, update the list of noncompensable services, and update the dispensed day supply limits and limits on refills.

Background

Medicaid is a cooperative Federal-state program by which the Federal government provides funds to states to enable those states, "as far as practicable," to make medical assistance, including Medicaid, available to indigent, elderly and disabled individuals. See 42 U.S.C. § 1396. Under Title XIX of the Social Security Act (the Medicaid provisions) (42 U.S.C. §§ 1396—1396w-7), a state is required to submit a State plan to the United States Department of Health and Human Services for approval. See 42 U.S.C. § 1396-1; 42 CFR 430.10 (relating to the State plan). In this Commonwealth, the Department administers the Medical Assistance (MA) Program, which covers Medicaid and State-funded medical services.

As part of the MA Program and its State plan, the Department makes payments to outpatient pharmacies (for example, community pharmacies) that are enrolled as MA providers. The Department makes payments to the enrolled pharmacies for drugs provided to beneficiaries who are enrolled in the MA Fee-for-Service (FFS) Program. The Department receives Federal reimbursement for these eligible drugs, which are also known as "covered outpatient drugs." Covered outpatient drugs are drugs which may be dispensed only upon a prescription, that are approved by the Food and Drug Administration (FDA), and are sold in an outpatient setting. See 42 CFR 447.502 (relating to definitions) regarding the definition of "covered outpatient drug." Prices for these drugs are not set by the pharmacy or pharmacist, as might be the case in a typical retail arrangement. Instead, the Department determines what it will pay enrolled pharmacies for each type of drug using two primary factors: the amount that the pharmacist must pay the drug manufacturer to obtain the drug, and the cost of the pharmacist to provide professional pharmacy services (such as filling a prescription and advising the customer of medication interactions).

Federal law establishes state requirements for how states must determine the payments using those two primary factors, among other things. The Department must follow those Federal requirements to be eligible for reimbursement under the Department's approved state plan. As discussed in the following paragraphs, the Federal government changed the requirements for states' payment methodologies. To maintain Federal funding for covered outpatient drugs, the Department must revise its regulation so that the payments it makes to pharmacy providers meet all of the requirements and limitations set forth in Federal law.

The Final Rule published by CMS revised the requirements for states' payment methodologies to pharmacies for covered outpatient drugs. See 81 FR 5169 (February 1, 2016). As a result of the Final Rule, the Department amended its State Plan, revising the pharmacy provider payment methodology for pharmaceutical services in the MA Program's FFS delivery system. The Department now proposes these amendments to comply with the Federal requirements.

Change to Drug Cost Determination (Ingredient Cost)

Under the Final Rule, the Department is required to use "actual acquisition cost" (AAC), instead of "estimated acquisition cost" (EAC), as the benchmark for drug ingredient cost, which CMS determined is a "better price indicator" than EAC. See 81 FR 5169, 5174 (February 1, 2016). Under the prior version of 42 CFR 447.502, EAC was defined as the "agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of drug most frequently purchased by providers." The Final Rule revises 42 CFR 447.502 and establishes AAC as the basis by which states should determine the pharmacy providers' actual price paid to acquire the drugs for dispensing.

The Final Rule defines the term "actual acquisition cost" (AAC) as "the agency's determination of the pharmacy providers' actual prices paid to acquire drug products marketed or sold by specific manufacturers." See 42 CFR 447.502. The Final Rule does not mandate that states use a specific formula or methodology to establish AAC. Instead, states had the flexibility to establish AAC based on several different benchmarks. Potential benchmarks include developing an AAC model of payment that is derived from a state survey of retail pharmacy providers; using published compendia prices, such as wholesale acquisition cost (WAC); using average manufacturer price-based pricing; or using a National survey, such as the National Average Drug Acquisition Cost (NADAC).

The NADAC, published by CMS, represents the National average invoice price from wholesalers and manufacturers. CMS informed states that they may use the NADAC pricing benchmark to establish their AAC model of payment. See State Health Official (SHO) Letter # 16-001, Affordable Care Act # 37 (February 11, 2016).

The Department considered the various benchmarks to establish payment for ingredient cost at AAC. The Department determined that NADAC would be consistent with efficiency and economy and will continue to assure quality of care and sufficient recipient access in accordance with section 1902(a)(30)(A) of the Social Security Act (42 U.S.C. § 1396a(a)(30)(A)).

CMS advised states in a webinar on "State Pharmacy Reimbursement Requirements," presented on April 28, 2016, that the purpose in establishing the NADAC was to create and publish a National pricing benchmark that State Medicaid programs could use when determining their payment to pharmacy providers. CMS contracted with Myers and Stauffer LC to conduct surveys of retail community pharmacy prices and to develop the NADAC pricing benchmark. The survey process included both independent and chain retail community pharmacies.

In the preamble to the Final Rule, CMS recognized that there may be instances when a survey price, such as NADAC, is not available for a specific drug product. See 81 FR 5169, 5175 (February 1, 2016). During the April 28, 2016 webinar, CMS reminded states that adopt the NADAC that they must also determine an alternative benchmark equivalent to NADAC for payment for drugs that do not have a NADAC available. CMS did not mandate that states use a specific formula or methodology to determine an alternative benchmark equivalent to NADAC.

The Department's previous pricing methodology used wholesale acquisition cost (WAC) as a benchmark and the Department already had access to the WAC pricing through subscription to a Nationally recognized pricing service. Therefore, the Department decided to continue to use WAC as the benchmark for drugs that do not have a NADAC. States that adopt a benchmark using WAC as the alternative methodology used when a NADAC price is not available, must provide data that demonstrates that the proposed payment methodology is based on AAC. See 81 FR 5169, 5176 (February 1, 2016).

In its discussion of the use of compendia prices listed in Nationally recognized pricing services, such as WAC, to implement the AAC, CMS noted that "the published prices may not reflect the actual prices paid by retail pharmacies" and therefore the Commonwealth was expected to make adjustments to these benchmarks to "reflect discounts and other price concessions that are commonly obtained by retail pharmacies." See SHO Letter # 16-001, Affordable Care Act # 37 (February 11, 2016). Mercer Government Human Services Consulting (Mercer) identified that approximately 83% of drugs and 75% of claims paid by FFS in the MA Program during calendar year 2015 have a NADAC price; 25% of claims did not have a NADAC available. Mercer compared NADAC to WAC for calendar year 2015 and determined that WAC minus 3.3% and WAC minus 50.5% were equivalent to NADAC values for brand name drugs and generic drugs, respectively, for payment for drugs without a published NADAC. The Department will announce any change to WAC rates that equate to NADAC by publication in the *Pennsylvania Bulletin* and notice on the Department's web site.

As previously described, payment for the ingredient cost of brand covered outpatient drugs will be based on NADAC, or an equivalent to NADAC, when a NADAC is not available. For generic drugs, the payment has additional constraints set forth in law. Therefore, payment for generic covered outpatient drugs will be based on NADAC, or an equivalent to NADAC when a NADAC is not available; the Federal Upper Limit (FUL) published by CMS; or the Department's state maximum allowable cost (State MAC) in accordance with 42 U.S.C. § 1396r-8(e).

The Department is continuing its use of a State MAC rate for generic covered outpatient drugs. The Department is also continuing to include the FUL in the lower of payment methodology for generic drugs to remain consistent with the requirement that payment for multiple source drugs must not exceed the aggregate upper limits of payment. See 42 CFR 447.512 (relating to drugs:

aggregate upper limits of payment). This payment methodology for brand and generic covered outpatient drugs also applies to compounded drugs.

Payment for covered outpatient drugs is additionally currently limited by, and will continue to be limited by, the 340B Drug Pricing Program. The 340B Drug Pricing Program, managed by the Health Resources and Services Administration (HRSA), allows certain health care providers ("covered entities") to obtain discounted prices on drugs from drug manufacturers. State Medicaid programs make payment to covered entities for drugs dispensed to Medicaid recipients but may not claim Federal Drug Rebates on 340B purchased drugs. HRSA calculates a 340B ceiling price for each drug, which represents the maximum price a manufacturer can charge a covered entity for the drug. To prevent Medicaid overpayment for drugs that are purchased through the 340B Drug Program, payment for the ingredient cost for brand and generic covered outpatient drugs is based on the methodology described previously but may not exceed the 340B ceiling price as described in section 340B(a)(1) of the Public Health Service Act (42 U.S.C. § 256b(a)(1)). See SHO # 116-001, Affordable Care Act # 37 (February 11, 2016).

CMS approved the State Plan Amendment, which included the ingredient cost pricing methodology described in this proposed rulemaking, with an approval date of July 30, 2018.

Change to Professional Dispensing Fee

The CMS Final Rule also requires the Department to pay a "professional dispensing fee," rather than a "reasonable dispensing fee," that reflects the pharmacist's professional services and cost to dispense the drug product to a Medicaid FFS recipient. The reasonable dispensing fee is an estimate of the cost for pharmacies to dispense a drug. A professional dispensing fee is determined by a state or National survey of pharmacy providers or other reliable data, and defined as:

> [T]he professional fee which: (1) Is incurred at the point of sale or service and pays for costs in excess of the ingredient cost of a covered outpatient drug each time a covered outpatient drug is dispensed; (2) Includes only pharmacy costs associated with ensuring that possession of the appropriate covered outpatient drug is transferred to a Medicaid recipient. Pharmacy costs include, but are not limited to, reasonable costs associated with a pharmacist's time in checking the computer for information about an individual's coverage, performing drug utilization review and preferred drug list review activities, measurement or mixing of the covered outpatient drug, filling the container, recipient counseling, physically providing the completed prescription to the Medicaid recipient, delivery, special packaging, and overhead associated with maintaining the facility and equipment necessary to operate the pharmacy; and (3) Does not include administrative costs incurred by the State in the operation of the covered outpatient drug benefit including systems costs for interfacing with pharmacies.

See 42 CFR 447.502; see also Final Rule, 81 FR 5169 (February 1, 2016). CMS did not mandate in the Final Rule that states must use a specific formula or methodology to determine the professional dispensing fee. Rather, CMS explained that states have the flexibility to set their professional dispensing fee by using methods such as a National survey, regional or neighboring state surveys, or a state-specific survey. See Covered Outpatient Drug Final Rule with Comment (CMS-2345-FC) Frequently Asked Questions (July 6, 2016).

The Department chose to use a State-specific dispensing fee survey to ensure that it adopted a professional dispensing fee that reflected Pennsylvania-specific pharmacy providers' cost to dispense a drug product to an MA Program FFS recipient. The survey was conducted by Mercer, using a survey that was designed following a review of dispensing fee surveys conducted at the National and state level.

All 3,280 pharmacies enrolled in the MA Program were included in the study population. The final total usable response rate was 51.5% of pharmacies enrolled in the MA Program. Respondents self-reported all the data, and a representative of each pharmacy certified the data as accurate. The data revealed that 81.6% of costs were accounted for by prescription department payroll, 8.9% by prescription department other costs, 6.1% by facility-related costs, and 3.5% by other non-facility administrative (overhead) expenses.

The professional dispensing fee, as defined in the Final Rule at 42 CFR 447.502, was calculated by dividing the total costs by the number of prescriptions dispensed. The survey results reflected $7 as the cost of professional dispensing for pharmacies dispensing prescriptions to FFS recipients. After discussion with CMS, the Department recalculated the dispensing fee by including some costs that had been excluded from the calculation, as well as taking into consideration the professional dispensing fees of states bordering this Commonwealth. The Department increased the professional dispensing fee to $10. On July 30, 2018, CMS approved the State Plan Amendment with the $10 professional dispensing fee and the change was implemented in accordance with the Federal requirement.

The Department is proposing an amendment to § 1121.55 (relating to method of payment) of the Department's regulations to reflect the professional dispensing fee.

Summary of Revised Payment Methodology for Pharmacy Providers

In summary, the Department will use the professional dispensing fee and the drug cost determinations, as previously described, to determine payments to pharmacies for covered outpatient drugs. The Department will continue to include "usual and customary" in its method of payment. See 42 CFR 447.512. Accordingly, payment for brand drugs will be based on the lower of:

1. NADAC, or an equivalent to NADAC when a NADAC is not available, plus a $10 professional dispensing fee.

2. The provider's usual and customary charge to the general public.

See 42 CFR 447.512; see also 55 Pa. Code § 1121.2 (relating to definitions). Payment for generic drugs will be based on the lower of:

1. NADAC, or an equivalent to NADAC when a NADAC is not available; the FUL published by CMS; or the Department's state maximum allowable cost (State MAC), plus a $10 professional dispensing fee.

2. The provider's usual and customary charge to the general public.

See 42 CFR 447.512; see also 55 Pa. Code § 1121.2. The Department is proposing an amendment to § 1121.55,

and proposes to delete § 1121.56 and add § 1121.56a (relating to drug cost determination) to reflect this revised payment methodology.

Technical Amendments

As noted in the Requirements section, the Department also proposes several technical changes to Chapters 1101, 1121, 1141, 1142 and 1144 to promote understanding and application of MA regulations governing the scope of benefits and payment for pharmaceutical services, and to align with the Department's current payment policies. These technical amendments are discussed in §§ 1101.63, 1121.52, 1121.53(c) and (d), 1121.54, 1141.60, 1142.56 and 1144.54.

1. *§ 1121.52. Payment conditions for various services.* The addition of "electronic" is proposed to recognize electronic prescriptions, consistent with the act of October 24, 2018 (Act 96 of 2018) (P.L. 662, No. 96) (49 Pa. Code § 27.1 (relating to definitions)).

2. *§ 1121.53(c). Limitations on payment.* The Department proposes changes to the limitation on prescriptions from a quantity of 34-day supply or 100 units, whichever is greater to a quantity of 90-day supply or 100 units, whichever is greater. The exception to the 90-day supply limit is systemic contraceptives. Department coverage was approved by CMS and began March 1, 2020, for all MA recipients. The proposed amendment facilitates access to drugs for MA recipients, including those who may have difficulty getting to a pharmacy. The Department proposes the removal of the limits on refills to 6 months or five refill supply, whichever comes first. The proposed amendment allows for prescriptions to be refilled in accordance with 49 Pa. Code § 27.18(h)—(j) (relating to standards of practice).

3. *§ 1121.53(d). Limitations on payment.* The Department also proposes the removal of the list of covered prescribed nonlegend drugs and dosage forms. Many of the drugs or dosages listed are obsolete. Advances in information technology have made the process of listing specific drug categories and drugs in regulations outdated, administratively inefficient, and inconsistent with current pharmacy standards. Rather than updating a list through the regulatory process which could be quickly outdated, the Department publishes the Medical Assistance Pharmacy Program FFS Drug Reference File on the Department's web site for public access. See DHS Pharmacy Services Covered Drugs Search Tool. Retrieved from https://www.humanservices.state.pa.us/CoveredDrugs/CoveredDrugs/Index.

4. *§ 1121.54. Noncompensable services and items.* The Department proposes the removal of prescribed legend and nonlegend cough and cold preparations for recipients 21 years of age or older consistent with Department coverage approved by CMS and which began March 1, 2020. The Department also proposes removing drugs prescribed in conjunction with sex reassignment procedures consistent with the removal from the State Plan of the noncoverage of these drugs. The Department also proposes to remove drugs to treat obesity. State Medicaid agencies have the option to cover drugs to treat obesity that meet the Medicaid requirements for coverage and the Department started covering these drugs on January 1, 2023.

5. *§ 1141.60. Payment for medications dispensed or ordered in the course of an office visit.* The Final Rule published by CMS revised the requirements for states' payment methodologies only to pharmacy providers for covered outpatient drugs. See 81 FR 5169 (February 1, 2016). The proposed amendment includes a reference to § 1121.56a(k), outlining the payment methodology for drugs dispensed by prescribing practitioners, including physicians, CRNPs and midwives. This information was not previously included in regulation.

6. *§ 1142.56. Payment for medications administered or dispensed in the course of a visit.* The proposed amendment would recognize prescriptive and dispensing authority of midwives in accordance with 49 Pa. Code § 18.6a (relating to prescribing, dispensing and administering drugs).

7. *§ 1144.54. Payment for medications administered or dispensed in the course of a visit.* The proposed amendment would recognize the prescriptive and dispensing authority of CRNPs in accordance with 49 Pa. Code § 21.284 (relating to prescribing and dispensing parameters).

Requirements

The following is a summary of the major provisions of this proposed rulemaking.

§ 1101.63. Payment in full.

The Department reviewed the list of services and drugs excluded from the copayment requirement for consistency with current Department operations. The proposed amendment to this section adds opioid overdose agents supporting the administration's commitment to improve access to care and use all available resources and funding to address the opioid epidemic. The proposed amendment also adds immunizations to the list of pharmaceutical services exempt from copayment to ensure access to preventative care. Lastly, the proposed amendment adds non-drug diabetic supplies to the list of covered services exempt from copayment to ensure access to all supportive needs for the treatment of diabetes.

In addition, the proposed amendment removes reference to general assistance (GA) recipients as the Department combined several adult benefit packages into one Adult Benefit Package, which includes recipients who were part of the GA program. With the consolidation, GA recipients have the same pharmacy benefits as all other MA recipients.

§ 1121.2. Definitions.

This section is proposed to be amended by:

• Deleting the definition of "AWP (average wholesale price)" as this benchmark is not used in the revised payment methodology.

• Deleting the definition of "EAC" because this term is obsolete under the Federal Final Rule. NADAC, or if no NADAC is available, a WAC rate adjusted to equate to NADAC values, will be used to determine ingredient cost.

• Correcting the reference to the Federal regulation in the definition of Federal upper limit, as 42 CFR 447.332 no longer exists.

• Amending the definition of "legend drug" to replace the term "physician" with the term "licensed prescriber." This proposed amendment reflects the current recognition that licensed physicians, midwives, CRNPs, dentists and physician assistants have prescriptive authority.

• Adding a definition of "NADAC—National Average Drug Acquisition Cost," as this benchmark is a component of the payment methodology for ingredient cost. The NADAC, published by CMS, represents the National average invoice price from wholesalers and manufacturers. See Medicaid, Pharmacy Pricing; retrieved from

https://www.medicaid.gov/medicaid/prescription-drugs/pharmacy-pricing/index.html. States that adopt NADAC are required to specify an alternative methodology that will be used when a NADAC price is not available for a covered outpatient drug. States that adopt a benchmark using WAC as the alternative methodology used when a NADAC price is not available, must provide data that demonstrates that the proposed payment methodology is based on AAC. See 81 FR 5169, 5176 (February 1, 2016); SHO Letter # 16-001, Affordable Care Act # 37 (February 11, 2016).

• Adding a definition of "Professional dispensing fee" consistent with Federal regulation. See 42 CFR 447.502.

• Amending the definition of "usual and customary charge" to include the initials "U&C."

Covered and Noncovered Services

§ 1121.11. Types of services covered.

In subsection (b), the word "the" in front of the word "nonlegend' is proposed to be deleted and the word "as" is proposed to be added in front of the word "specified" to improve readability. In addition, the proposed amendment removes reference to GA recipients, as the Department combined several adult benefit packages into one Adult Benefit Package. There is no longer a need to reference the GA recipients, as recipients have the same pharmacy benefit as all other MA recipients.

Provider Participation

§ 1121.42. Ongoing responsibilities of providers.

Proposed amendments include deleting the reference in paragraph (1) to Chapter 1101 for the definition of U&C and adding "this chapter" to clarify the location of the definition of U&C for pharmacy providers; removing the comma between "photocopy" and "or duplicate" to be grammatically correct; deleting the outdated and obsolete phrases in subparagraph (iv) "store, including but not limited to, pricing rolodex, patient profile and pricing codes" and replacing with the term "pharmacy"; deleting all of subparagraph (v) to be consistent with current pharmacy practice standards.

Payment for Pharmaceutical Services

§ 1121.51. General payment policy.

Proposed amendments include the following changes in terminology to be consistent with Medicaid terminology and changes to certain titles: deleting "County Mental Health/Mental Retardation Programs" and adding "County Mental Health/Developmental Services Program." The proposed rulemaking also deletes "Mental Health and Mental Retardation Act" and adds "Mental Health and Intellectual Disability Act." In the Federal Final Rule 9070-F, Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction, CMS sought to standardize the language between the Medicare and Medicaid programs, including by replacing the term "mental retardation" with "intellectual disability."

§ 1121.52. Payment conditions for various services.

In subsection (a), the phrase "the mentally retarded" is proposed to be amended to "individuals with intellectual disabilities." Also, the addition of "electronic" is proposed to recognize electronic prescriptions, consistent with Act 96 of 2018 and the word "form" is proposed to be deleted in recognition that a prescription may now be a written, electronic or oral order in accordance with 49 Pa. Code § 27.1.

In subsection (a)(8), language is proposed to include the National Provider Identifier on the prescription, which is required by section 1902(a)(kk)(7) of the Social Security Act, instead of the professional license number. The Department is proposing to delete the language in subsection (b) which is outdated and obsolete; coverage of single entity and multiple vitamins is not limited to prenatal use. In subsection (b.1), the Department proposes to add language addressing requirements related to prior authorization of pharmaceutical services, consistent with current procedure.

§ 1121.53. Limitations on payment.

This section is proposed to be amended by adding a reference to the FUL in subsection (b) as both the FUL and the State MAC are limits on the drug cost component for selected multisource drugs. The FUL and the State MAC are separate and distinct components of the drug cost component of payment for generic drugs. The FUL is published by CMS; the State MAC is established by the Department. A multisource drug may have both a FUL and a State MAC. For this reason, the Department is also proposing to delete the reference that the State MAC includes a combination of the CMS multisource drugs and the State MAC drugs.

Subsection (b)(1)(i) proposes to add language recognizing electronic prescribing. Subsection (b)(2) is proposed to be deleted as unnecessary, because the State Board of Pharmacy defines the standards of practice related to oral prescriptions in their regulations. See 49 Pa. Code § 27.18(n) and (o).

Subsection (c) is proposed to be amended by changing the limitation on prescriptions of a quantity of 34-day supply or 100 units, whichever is greater, to a 90-day supply or 100 units, whichever is greater, except that payment for systemic contraceptives may exceed the 90-day supply limit as specified by the Department. This change is consistent with the State Plan, approved by CMS, effective March 1, 2020, which originally ensured access to prescriptions for all MA recipients during the novel coronavirus (COVID-19) pandemic, and now continues. The proposed amendment provides more convenient access to MA recipients with transportation issues and is consistent with current dispensing limits permitted by the MA managed care organizations and private insurers. The exception for systemic contraceptives enables the Department to pay for more than 90 day-supplies in one dispensing in accordance with 49 Pa. Code § 27.18(h)—(j). The limits on refills of 6 months or five refill supply, whichever comes first, from the time of original filling of the prescription is replaced with prescriptions may be refilled "in accordance with 49 Pa. Code § 27.18(h)—(j) (relating to standards of practice)" to ensure consistency with all regulatory provisions. The amendment to the limits on refills are also consistent with the State Board of Pharmacy's regulations which allow for prescriptions to be refilled up to 12 months. The word "licensed" is proposed to be added to describe and be consistent with the term licensed prescriber.

Subsection (d) is proposed to be amended by adding language indicating that payment for nonlegend drugs is limited to drugs listed on the Department's web site. The categories of nonlegend drugs listed in subsection (d)(1)—(17) are proposed to be deleted. While there is no change to the Department's policy for coverage of nonlegend drugs, some of the categories and many of the drugs listed are obsolete. Advances in information technology have made the process of listing the categories and nonlegend drugs in regulations outdated, administratively

inefficient and inconsistent with current industry standards. Rather than updating a list through the regulatory promulgation process which would provide no detail about the covered drug and which could be quickly outdated, the Department posts the Medical Assistance Pharmacy Program FFS Drug Reference File on the Department's web site. The Drug Reference File contains all covered outpatient drugs, including covered nonlegend drugs included in the CMS Drug Product Data File. The CMS File lists the active drugs that have been reported by participating drug manufacturers as of the most recent rebate reporting period under the Medicaid Drug Rebate Program. Any interested party can access the File. The phrase "and dosage forms" is proposed to be deleted as the file on the web site provides detailed data about the drug product that was previously unavailable under the list in subsection (d)(1) through (17).

The language in subsection (e) is proposed to be deleted and reserved as vitamins are not limited to children under 3 years of age and for prenatal use. Proposed subsection (f) will replace the phrase "the mentally retarded" with "individuals with intellectual disabilities."

§ 1121.54. Noncompensable services and items.

Paragraph (1) is proposed to be deleted entirely to permit coverage of drugs prescribed for obesity. Obesity is a chronic, progressive, relapsing and treatable multifactorial disease that results in adverse metabolic, biomechanical and psychosocial health consequences. Advances in drug therapies to treat obesity has given the medical community treatment options.

Paragraph (7) references "legend and nonlegend soaps, cleansing agents," and "diluents, ear wax removal agents." These terms are proposed to be deleted as the scope of pharmaceutical services includes these products.

Paragraph (9) is proposed to be amended to include "as compensable pharmaceutical services on the Department's web site as specified in § 1121.53(d)" to be consistent with the proposed change to that subsection.

Paragraph (10) is proposed to be amended to remove "sex reassignment procedures or other" because the Department currently covers drugs prescribed for gender dysphoria without regard to sex reassignment procedures.

Paragraph (11) proposes to delete the phrase "the mentally retarded" and add "individuals with intellectual disabilities"; and delete the reference to "Antacids with simethicone" in subparagraph (iii)(C) as it is duplicative of subparagraph (iii)(B) Antacids.

Paragraph (12) is proposed to be amended by adding a statement that the list of providers precluded from participation will be posted on the Department web site and deleting the statement that the Department will send copies of the list to pharmacies, as this information is more readily accessible and well-maintained on the web site.

Paragraph (13) is proposed to be amended by deleting the outdated reference to "special medical services eligibility cards" for recipients restricted (lock-in) to specific pharmacies and by adding language referencing the Eligibility Verification System (EVS) to verify a recipient restriction, which is how providers verify eligibility and identify if a beneficiary is restricted to a provider.

Paragraph (15) updates the reference to the "county mental health/mental retardation" programs with the "county mental health/developmental services" programs.

Under paragraph (17), the Department proposes to update the reference to the Federal law for accuracy. The reference to the Department issuing a special list of drug companies is edited to reflect the current procedure of issuing periodic updates to the list of drug companies that participate in the Federal Drug Rebate Program by a remittance advice which is also posted on the Department web site. The pharmacy's responsibility to check the list before filling the prescription is proposed to be deleted as unnecessary. When a pharmacist enters a claim for a prescribed drug, the pharmacist is notified on-line at the point-of-sale if the prescribed drug is not a compensable pharmaceutical service.

Paragraph (18) is proposed to be deleted.

Paragraph (20) adds to the list of noncompensable services "agents used to promote fertility." Paragraph (21) adds to the list of noncompensable services "agents used for cosmetic purposes or hair growth." The addition of paragraphs (20) and (21) are consistent with provisions in the Department's CMS-approved State Plan.

§ 1121.55. Method of payment.

The Department proposes to replace "lowest" with "lower" in subsection (a) for grammar and clarity. Subsection (a)(1) is proposed to be amended by deleting the obsolete term EAC and replacing it with a reference to the drug cost determination in § 1121.56a for brand name, generic and compounded drugs. This subsection is also proposed to be amended by replacing the term "dispensing fee" with "professional dispensing fee" and specifying a $10 professional dispensing fee. Subsection (a)(2) is proposed to be amended by deleting the payment methodology, which is now being delineated in § 1121.56a. The language previously in subsection (a)(3) is now included in amended subsection (a)(2). The language previously in subsection (a)(4) is now included in subsection (a)(3) and is proposed to be amended by deleting the reference to EAC and State MAC. Subsection (b) is proposed to be deleted, as the specific dispensing fee for compounded prescriptions no longer applies and is being replaced by the professional dispensing fee.

§ 1121.56. Drug cost determination.

Because of the extensive changes necessary to § 1121.56 to reflect the payment methodology approved by the CMS to comply with the Final Rule, the Department proposes to delete the entire section. The new payment methodology is proposed to be set forth in § 1121.56a.

§ 1121.56a. Drug cost determination.

Proposed subsection (a)(1) provides that the payment to enrolled licensed pharmacies for ingredient cost of brand name drugs is the NADAC established by CMS. If no NADAC is available, then a WAC rate adjusted to equate to NADAC values will be used.

Proposed subsection (a)(2) provides that the payment to enrolled licensed pharmacies for ingredient cost of generic drugs is the lower of the following: NADAC, or if no NADAC is available, a WAC rate adjusted to equate to NADAC values, the CMS published FUL, or the State MAC established by the Department.

Proposed subsection (b) provides that the payment for 340B purchased drugs is based on the payment methodology in subsection (a), except that payment cannot exceed the 340B ceiling price.

Proposed subsection (c) provides how the Department will update its reference to NADAC and the frequency of updates to NADAC. The language previously in § 1121.56(c) of the regulation is included in proposed § 1121.56a(f).

Proposed subsection (d) provides for periodic updates to the WAC rates that equate to NADAC, and that updates will be announced by publication of notice in the *Pennsylvania Bulletin*, and made available on the Department's web site. The methodology for determining State MAC rates, previously in § 1121.56(d)(1), is included in proposed § 1121.56a(i). The language proposed to be deleted in § 1121.56(d)(2) and (g) related to disposable insulin syringes, is not being added to § 1121.56a because the disposable insulin syringes are not drugs and Chapter 1121 applies to drugs. Disposal insulin syringes are medical supplies and subject to Chapter 1123 (relating to medical supplies).

Proposed subsection (e) provides the methodology to determine the WAC rates that equate to NADAC values.

Proposed subsection (f), which is based on § 1121.56(c), explains the FUL. The Department proposes to delete the reference to how and when CMS provides the list of drugs with an FUL due to the possibility of changes in the manner in which CMS communicates with the states.

Proposed subsection (g), which is based on § 1121.56(f), describes when the Department will establish a State MAC and does not retain the § 1121.56(f) reference to consultation with the Medical Assistance Advisory Committee (MAAC) as to whether the application of a State MAC is cost effective to the Department for a particular multisource drug. The Department had consulted with the Pharmacy Subcommittee of the MAAC, but this Subcommittee no longer exists. The subcommittees of the MAAC are now organized to reflect service delivery systems rather than provider types.

Proposed subsection (h) describes the frequency of updates to the State MAC. The language previously in § 1121.56(h), which contains the obsolete method for determining product cost based on package size, is not retained here. The product cost is based on the 11-digit NDC, which is a more accurate metric for determining product cost.

Proposed subsection (i), which is based on § 1121.56(d)(1), describes the method to establish the State MAC rates.

Proposed subsection (j) provides that the State MAC does not apply if the conditions are met under § 1121.53(b) (relating to limitations on payment).

Proposed subsection (k) provides for the determination of ingredient cost for licensed prescribers, previously in § 1121.56(a). The determination of ingredient cost for payment to enrolled dispensing prescribers is not subject to the requirements in the Covered Outpatient Drug Final Rule. The proposed language describing the determination of ingredient cost has been simplified to reflect pricing based upon the availability of pricing information from Nationally recognized pricing services. The Department's pricing service, First Databank, stopped publishing AWP as a pricing benchmark. As a result, a comparison of "lowest of" AWP and WAC prices listed in all the Nationally recognized pricing services became ineffectual with WAC defaulting as the prevailing price. The Department continues to rely on a Nationally recognized pricing service to identify WAC when determining ingredient cost for payment to dispensing prescribers and determined that it was impractical to continue to require its claims processing contractor to continue subscribing to all Nationally recognized pricing services.

Proposed subsection (l), which is based on § 1121.56(b), continues to provide for WAC to be updated at least monthly.

Payment for Physicians' Services

§ 1141.60. Payment for medications dispensed or ordered in the course of an office visit.

The proposed amendments to this section include changing the title by replacing the term "dispensed or ordered" with "administered or dispensed," and deleting "office" to allow for payment in the course of an office or home visit. The proposed amendments to the language includes replacing "Physicians may be reimbursed for the actual cost of medications" with "Payment is made to physicians for covered brand name and generic drugs as determined by § 1121.56a(k), multiplied by the number of units" in that sentence. The proposed amendment also clarifies that the conditions and limitations in Chapter 1121 apply to pharmaceutical services administered or dispensed by a physician. The Department proposes to replace the term "reimbursement" with "payment made" to improve clarity and consistency regarding the payment for medications.

Payment for Midwives' Services

§ 1142.56. Payment for medications administered or dispensed in the course of a visit.

The Department proposes to add this section to recognize the prescribing and dispensing authority of midwives. The proposed amendment also clarifies that the conditions and limitations in Chapter 1121 apply to pharmaceutical services administered or dispensed by a midwife.

Payment for Certified Registered Nurse Practitioner Services

§ 1144.54. Payment for medications administered or dispensed in the course of a visit.

The Department proposes to add this section to recognize the prescribing and dispensing authority of CRNPs. The proposed amendment also clarifies that the conditions and limitations in Chapter 1121 apply to pharmaceutical services administered or dispensed by a CRNP.

Affected Individuals and Organizations

Pharmacies enrolled in the MA Program that provide services to FFS recipients will be affected by this proposed rulemaking for the payment methodology for covered outpatient drugs. There are currently 3,572 pharmacy service locations enrolled in the MA Program, representing 1,307 distinct legal entities. Overall pharmacy payment in FFS is estimated to increase by 6.6% based upon the current payment methodology. There is no anticipated access to care issues for MA Program recipients receiving pharmaceutical services in FFS. This change does not impact payments to pharmacies participating with MA managed care organizations. MA Program FFS recipients will not be affected by these changes.

The technical amendments are intended to promote understanding and application of MA regulations governing the scope of benefits and payment for pharmaceutical services.

Accomplishments and Benefits

The proposed amendments to the regulations are needed to make the payment methodology described in regulation consistent with the payment methodology mandated by the Final Rule. Compliance with the revised Federal regulation from the Final Rule will ensure receipt of Federal matching funds (Federal financial participation) for all pharmacy services paid by the Department for MA Program FFS recipients. Outpatient pharmacy

providers enrolled in the MA Program that dispense covered outpatient drugs to FFS recipients will benefit from a 6.6% increase in payments annually.

The Department issued a public notice that announced changes to the FFS payment methodology for outpatient drugs in the MA Program. See 47 Pa.B. 1921 (April 1, 2017). The Department subsequently submitted a State Plan Amendment to CMS. On July 30, 2018, CMS approved the State Plan Amendment, which included the payment methodology described in this proposed rulemaking.

Fiscal Impact

Under the revised payment methodology, FFS payment to outpatient pharmacies is estimated to increase by 6.6%.

Contact Persons

The primary contact person is Lacey Gates, Department of Human Services, Office of Medical Assistance Programs, Bureau of Policy, Analysis and Planning, P.O. Box 2675, Harrisburg, PA 17120, RA-PWMAProgComments@pa.gov. Reference regulation # 14-544 in the subject line.

Persons with a disability who require an auxiliary aid or service may use the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Paperwork Requirements

There are no legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork required to comply with this proposed rulemaking.

Effective Date

This proposed rulemaking is effective upon publication as final in the *Pennsylvania Bulletin*.

Public Hearings

The Department is not proposing to conduct public hearings on regulations mandated by the Final Rule. Instead of public hearings, the Department provided stakeholders an opportunity for review and public comment. A pharmacy stakeholder meeting was held on July 26, 2016, to allow for provider input into the professional dispensing fee survey process. The proposed payment methodology was shared at the March 23, 2017, MAAC meeting and a description of the plan was posted on the Department's web site for public comment. The Department also issued a public notice announcing the proposed changes to the payment methodology and provided a comment period. See 47 Pa.B. 1921 (April 1, 2017). The Department issued an update to the previous public notice announcing an additional increase in the professional dispensing fee. See 48 Pa.B. 7589 (December 8, 2018).

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Department of Human Services, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Lacey Gates, Room 515, Health and Welfare Building, Harrisburg, PA 17120, within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-544 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 9, 2023, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Health Committee and the Senate Health and Human Services Committee. A copy of this material is available to the public upon request.

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

VALERIE A. ARKOOSH,
Secretary

Fiscal Note: 14-544. Under section 612 of The Administrative Code of 1929 (71 P.S. § 232), (1) General Fund; (2) Implementing Year 2022-23 is $565,000; (3) 1st Succeeding Year 2023-24 through 5th Succeeding Year 2027-28 is $634,000; (4) 2021-22 Program—$644,059,000; 2020-21 Program—$808,350,000; 2019-20 Program—$344,107,000; (7) MA—Fee-for-Service; (8) recommends adoption. Funds have been included in the budget to cover this increase.

Annex A

TITLE 55. HUMAN SERVICES

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1101. GENERAL PROVISIONS

FEES AND PAYMENTS

§ 1101.63. Payment in full.

* * * * *

(b) *Copayments for MA services.*

(1) Recipients receiving services under the MA Program are responsible to pay the provider the applicable copayment amounts set forth in this subsection.

(2) The following services are excluded from the copayment requirement for all categories of recipients:

(i) Services furnished to individuals under 18 years of age.

* * * * *

(xxv) More than one of a series of a specific allergy test provided in a 24-hour period.

(xxvi) Diabetic supplies.

(xxvii) Drugs, including immunizations, that are dispensed by a prescriber.

(xxviii) Specific drugs identified by the Department in the following categories:

(A) Antihypertensive agents.

(B) Antidiabetic agents.

(C) Anticonvulsants.

(D) Cardiovascular preparations.

(E) Antipsychotic agents, except those that are also schedule C-IV antianxiety agents.

(F) Antineoplastic agents.

(G) Antiglaucoma drugs.

(H) Antiparkinson drugs.

(I) Drugs whose only approved indication is the treatment of acquired immunodeficiency syndrome (AIDS).

(J) Opioid overdose agents.

(K) Immunizations.

(3) **[The following services are excluded from the copayment requirement for categories of recipients except GA recipients age 21 to 65:**

(i) Drugs, including immunizations, dispensed by a physician.

(ii) Specific drugs identified by the Department in the following categories:

(A) Antihypertensive agents.

(B) Antidiabetic agents.

(C) Anticonvulsants.

(D) Cardiovascular preparations.

(E) Antipsychotic agents, except those that are also schedule C-IV antianxiety agents.

(F) Antineoplastic agents.

(G) Antiglaucoma drugs.

(H) Antiparkinson drugs.

(I) Drugs whose only approved indication is the treatment of acquired immunodeficiency syndrome (AIDS)] **[Reserved]**.

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CHAPTER 1121. PHARMACEUTICAL SERVICES

GENERAL PROVISIONS

§ 1121.2. Definitions.

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

[*AWP*—The average wholesale price for a drug as found in the Department's pricing service publication.]

Brand name—A registered trade name commonly used to identify a drug.

CMS—The Centers for Medicare and Medicaid Services.

CMS multisource drug—A multisource drug identified by CMS for which FFP is limited under 42 CFR 447.331—447.333 (relating to drugs: aggregate upper limits of payment; upper limits for multiple source drugs; state plan requirements, findings and assurances).

Compounded prescription—A prescription that is prepared in the pharmacy by combining two or more ingredients and involves the weighing of at least one solid ingredient which shall be a compensable item or a legend drug in a therapeutic amount.

DESI drug—A drug product for which Federal Financial Participation FFP is not available under 42 CFR 441.25 (relating to less than effective drugs).

[*EAC—Estimated Acquisition Cost*—As defined in 42 CFR 447.301 (relating to definitions).]

Experimental drug—A drug or product currently being investigated under licensure by the FDA to determine its safety and effectiveness.

FDA—Food and Drug Administration.

FFP—Federal financial participation.

FUL—*Federal Upper Limit*—The per unit amount set for a multisource drug which is established by CMS under **[42 CFR 447.332]** **42 CFR 447.514 (relating to upper limits for multiple source drugs)**.

Generic drug—A drug that is "A-rated" by the FDA as therapeutically equivalent to the counterpart brand name drug.

Legend drug—A drug or product that under Federal law or State law can be dispensed only upon the order of a **[physician]** **licensed prescriber**.

Licensed prescriber—A person currently licensed under the law of a state to order medication.

Multisource drug—A drug marketed or sold by two or more manufacturers or labelers or a drug marketed or sold by the same manufacturer or labeler under two or more different proprietary names or both under a proprietary name and without such a name.

***NADAC—National Average Drug Acquisition Cost*—CMS-published drug prices derived from a monthly Nationwide survey of invoice prices for covered outpatient drugs purchased by retail community pharmacies from wholesalers and manufacturers.**

Nonlegend drug—A drug or product that can be purchased without a prescription.

OBRA '90—The Omnibus Budget Reconciliation Act of 1990 (Pub.L. No. 101-508, 104 Stat. 1388).

Pricing service—A third-party source that compiles and provides drug-specific information needed to maintain the drug reference file under this chapter.

***Professional dispensing fee*—As defined at 42 CFR 447.502 (relating to definitions).**

State MAC—The maximum allowable cost established for a multisource drug.

U&C—*Usual and customary charge*—The pharmacy's lowest net charge an MA recipient would pay for a prescription as a non-Medicaid patient at the time of dispensing for the same quantity and strength of a particular drug or product, including applicable discounts, such as special rates to nursing home residents, senior citizens, or other discounts extended to a particular group of patients, including generic drug discount and savings programs. This lowest net price does not apply to special in-store rates or discounts extended to charitable organizations, religious groups, store employees and their families, nonprofit organizations, members of the medical profession or other similar non-Medicaid groups.

WAC—Wholesale Acquisition Cost—The manufacturer's list price for a drug to wholesalers or direct purchasers in the United States as listed in one or more available Nationally recognized pricing services.

COVERED AND NONCOVERED SERVICES

§ 1121.11. Types of services covered.

* * * * *

(b) The MA Program covers **[the]** nonlegend drugs **as** specified in § 1121.53(d) (relating to limitations on payment) **[, except that for GA recipients, coverage of**

nonlegend drugs is limited to insulin and drugs that the Department has identified as the preferred drug in a therapeutic class].

* * * * *

PROVIDER PARTICIPATION

§ 1121.42. Ongoing responsibilities of providers.

In addition to the ongoing responsibilities established in Chapter 1101 (relating to general provisions) pharmacies shall, as a condition of participation, comply with the following requirements:

(1) Permit authorized State and Federal officials or their authorized agents to conduct onsite reviews for the purpose of verification of information furnished as a basis for payment under the MA Program and for establishing the pharmacy's usual and customary charge to the general public as defined in **[Chapter 1101]** **this chapter**. During the course of the review, the reviewers shall be allowed access to the dispensing area. The provider shall allow reviewers access to records and documents necessary to determine whether payment for services is or was due under the Program and whether services that have been and are being provided comply with Federal and State law. The reviewer shall be allowed to photocopy**[,]** or duplicate these records and documents. These records include:

(i) MA prescriptions on file.

(ii) Non-MA prescriptions without the reviewer having access to patient identification.

(iii) Pharmaceutical purchase invoices.

(iv) The pricing system used by the **[store, including but not limited to, pricing rolodex, patient profile and pricing codes]** **pharmacy**.

(v) **[Price lists attached to prescription containers]** **[Reserved]**.

(2) Conform to accepted standards of practice and quality of service when dispensing prescriptions to MA recipients. It shall be considered contrary to accepted standards of practice for a pharmacy to differentiate between MA recipients and the general public, as defined in Chapter 1101.

PAYMENT FOR PHARMACEUTICAL SERVICES

§ 1121.51. General payment policy.

Payment is made for covered pharmaceutical services provided by participating pharmacies**,** subject to the conditions and limitations in this section and §§ 1121.52—**[1121.56]** **1121.56a** and Chapter 1101 (relating to general provisions). Payment will not be made for a compensable pharmaceutical service if payment is available from another public agency or another insurance or health program. This does not apply to MA recipients whose drugs have been prescribed through the **[County Mental Health/Mental Retardation Programs]** **County Mental Health/Developmental Services Programs** operated under the **[Mental Health and Mental Retardation Act]** **Mental Health and Intellectual Disability Act** of 1966 (50 P.S. §§ 4101—4704). In this instance only, providers may bill the MA Program for services as specified in this chapter.

§ 1121.52. Payment conditions for various services.

(a) MA prescriptions, including those for recipients in skilled nursing facilities, intermediate care facilities or intermediate care facilities for **[the mentally retarded]** **individuals with intellectual disabilities**, which **[have been]** **are** either written**, electronic** or verbally ordered by a licensed prescriber shall contain on the prescription **[form]**:

(1) The name and address of the patient.

* * * * *

(8) The **[professional license number]** **National Provider Identifier (NPI)** of the licensed prescriber.

(b) **[The following service requires prior authorization as specified in § 1101.67 (relating to prior authorization): Each original prescription for single entity and multiple vitamins when prescribed for prenatal use. The Department will automatically issue a prior authorization for prescriptions indicating a diagnosis of pregnancy for single entity and multiple vitamins]** **[Reserved]**.

(b.1) Compensable pharmaceutical services that require prior authorization shall be authorized by publication of notice in the *Pennsylvania Bulletin* and listed on the Department's web site. Providers must follow the procedures as set forth in § 1101.67 (relating to prior authorization), to ensure appropriate and timely processing of prior authorization requests for compensable pharmaceutical services that require prior authorization.

(c) For payment to be made for filling altered prescriptions, the pharmacy shall certify in writing on the prescription that the change was made by the licensed prescriber. Changes in the nature or brand of a medication, the strength of a medication, directions or quantity dispensed are acceptable only if the consent of the prescriber was obtained before dispensing. The written explanation of the pharmacy on the prescription must state that this was done and give the reasons for the change.

§ 1121.53. Limitations on payment.

* * * * *

(b) **[The]** **CMS establishes a FUL and the** Department establishes a State MAC which **[sets]** **set** a limit on the drug cost component of the payment formula for selected multisource drugs. The **FUL and the** State MAC **[will include a combination of CMS multisource drugs and the Department's MAC drugs and does]** **do** not apply if the following exist:

(1) The licensed prescriber certifies that a specific brand is medically necessary by doing all of the following:

(i) Writes on the prescription form "Brand Necessary" or "Brand Medically Necessary" in the prescriber's own handwriting **or by an electronic alternative means as clarified in § 1121.52a (relating to clarification of the term "written"—statement of policy)**.

(ii) Receives prior authorization from the Department to use the brand name product.

(2) **[In the case of a telephone prescription, the licensed prescriber sends a properly completed prescription, as described in paragraph (1), to the pharmacist within 15 days of the date of service]** **[Reserved]**.

(c) Payment for prescriptions is limited to **[quantities consistent with the medical needs of the patient not to exceed a 34-day supply or 100 units]** **no more**

than a 90-day supply or 100 units, whichever is greater**, except that payment for systemic contraceptives may exceed the 90-day supply limit as specified by the Department**. Prescriptions may be refilled **[as long as the total authorization does not exceed a 6 months' or five refill supply, whichever comes first, from the time of original filling of the prescription] in accordance with 49 Pa. Code § 27.18(h)—(j) (relating to standards of practice)**. Refills shall be authorized by the **licensed** prescriber at the time the prescription is ordered, and the quantity dispensed on the refills may exceed the quantity prescribed on the initial prescription only if noted at the time the licensed prescriber orders the initial prescription.

(d) Payment for prescribed nonlegend drugs shall be limited to drugs **[and dosage forms listed in the following categories:**

(1) Analgesics except long acting products.

(i) Acetaminophen and acetaminophen combinations in the form of tablets, capsules, suppositories, liquids and drops.

(ii) Aspirin and aspirin combinations in the form of tablets, capsules and suppositories.

(iii) Salicylates in the form of tablets, capsules and liquids.

(iv) Ibuprofen in its available dosage forms.

(2) Antacids.

(3) Antidiarrheals.

(i) Kaolin-pectin combinations.

(ii) Loperamide in its available dosage forms.

(4) Antiflatulents.

(i) Simethicone.

(ii) Simethicone combined with antacid.

(5) Antinauseants.

(i) Concentrated balanced solutions of sugar and orthophosphoric acid.

(ii) Cyclizine lactate.

(iii) Dimenhydrinate.

(iv) Meclizine hydrochloride.

(6) Bronchodilators.

(7) Cough—cold preparations, not including mouthwashes, lozenges, troches, throat sprays or rubs, only when prescribed for MA recipients under 21 years of age.

(8) Contraceptives.

(9) Hematinics, not including long-acting products.

(i) Ferrous fumarate.

(ii) Ferrous gluconate.

(iii) Ferrous sulfate.

(10) Insulin and disposable insulin syringes.

(11) Laxatives and stool softeners.

(12) Nasal preparations.

(i) Oxymetazoline.

(ii) Phenylephrine.

(iii) Xylometazoline.

(iv) Naphazoline.

(13) Ophthalmic preparations.

(i) Ocular lubricants containing polyvinyl alcohol or cellulose derivatives.

(ii) Phenylephrine in all ophthalmic forms.

(iii) Sodium chloride in strengths of 2% or greater in ophthalmic forms.

(14) Topical products containing one or more of the following active ingredients.

(i) Anesthetics.

(A) Benzocaine.

(B) Cyclomethycaine.

(C) Dibucaine.

(D) Lidocaine.

(E) Pramoxine.

(F) Tetracaine.

(ii) Antibacterials.

(A) Bacitracin.

(B) Neomycin.

(C) Polymyxin.

(D) Povidone-iodine.

(E) Tetracycline.

(iii) Dermatological baths.

(A) Colloidal oatmeal and combinations.

(B) Soya protein complex and combinations.

(iv) Fungicidals.

(A) Iodochlorhydroxyquin (clioquinol).

(B) Miconazole nitrate.

(C) Salicylanilide.

(D) Salicylic acid.

(E) Sodium caprylate.

(F) Sodium proprionate.

(G) Triacetin (glyceryl triacetate).

(H) Tolnaftate.

(I) Undecylenic acid, esters and salts.

(v) Rectal preparations.

(A) Bismuth subgallate.

(B) Yeast.

(C) Zinc oxide.

(vi) Tar preparations, not including soaps and cleansing agents.

(vii) Wet dressings.

(A) Aluminum acetate.

(B) Aluminum sulfate.

(C) Calcium sulfate.

(D) Zinc sulfate.

(15) Vitamins and minerals.

(i) Single entity and multiple vitamins with or without fluoride for children under 3 years of age.

(ii) Single entity and multiple vitamins when prescribed for prenatal use.

(iii) Nicotinic acid and its amides.

(iv) Calcium salts.

(16) Diagnostic agents.

(17) Quinine] listed on the Department's web site.

(e) **[Payment for single entity and multiple vitamins is limited to the following:**

(1) Those prescribed, with or without fluorides, for children under 3 years of age.

(2) Those prescribed for prenatal use] [Reserved].

(f) Payment to a pharmacy for prescriptions dispensed to a recipient in either a skilled nursing facility, an intermediate care facility or an intermediate care facility for **[the mentally retarded] individuals with intellectual disabilities** shall be limited to one dispensing fee for each drug dispensed within a 30-day period.

§ 1121.54. Noncompensable services and items.

Payment will not be made to a pharmacy for the following services and items:

(1) **[Drugs and other items prescribed for obesity, appetite control or other similar or related habit altering tendencies. Drugs which have been cleared for use in the treatment of hyperkinesis in children and primary and secondary narcolepsy due to structural damage of the brain are compensable if the physician indicates the diagnosis on the original prescription] [Reserved]**.

(2) Nonlegend drugs in the form of troches, lozenges, throat tablets, cough drops, chewing gum, mouthwashes and similar items.

(3) Pharmaceutical services provided to a hospitalized person.

(4) Drugs and devices classified as experimental by the FDA or whose use is classified as experimental by the FDA.

(5) Drugs and devices not approved by the FDA or whose use is not approved by the FDA.

(6) Placebos.

(7) **[Legend and nonlegend soaps, cleansing agents,] Nonlegend** dentifrices, mouthwashes, douche solutions, **[diluents, ear wax removal agents,]** deodorants, liniments**[, antiseptics, irrigants]** and other personal care and medicine chest items.

(8) Compounded prescriptions when one of the following applies:

(i) Compensable items are used in less than therapeutic quantities.

(ii) Noncompensable items are compounded.

(9) Nonlegend drugs not listed **as compensable pharmaceutical services on the Department's web site as specified** in § 1121.53(d) (relating to limitations on payment).

(10) Drugs prescribed in conjunction with **[sex reassignment procedures or other]** noncompensable procedures.

(11) The following items when prescribed for recipients in a skilled nursing facility, an intermediate care facility or an intermediate care facility for **[the mentally retarded] individuals with intellectual disabilities**:

(i) Intravenous solutions.

(ii) Noncompensable drugs and items as specified in this section.

(iii) The following nonlegend drugs:

(A) Analgesics.

(B) Antacids.

(C) **[Antacids with simethicone] [Reserved]**.

(D) Cough-cold preparations.

(E) Contraceptives.

(F) Laxative and stool softeners.

(G) Ophthalmic preparations.

(H) Diagnostic agents.

(iv) Legend laxatives.

(12) Items prescribed or ordered by a prescriber who has been barred or suspended from participation in the MA Program. The **[Department will periodically send pharmacies a list of the names of suspended, terminated or reinstated practitioners and the dates of the various actions] list of providers precluded from participation in the MA Program will be posted on the Department web site.** Pharmacies are responsible for checking this list before filling prescriptions.

(13) Prescriptions or orders filled by a pharmacy other than the one to which a recipient has been restricted under § 1101.91 (relating to recipient misutilization and abuse). **[The Department will issue special medical services eligibility cards to restricted recipients indicating the name of the pharmacy to which the recipient is restricted.]** Pharmacies are responsible for checking the **[recipient's medical services eligibility card] Eligibility Verification System (EVS) to determine if the recipient is restricted to a specific provider** before filling the prescription.

(14) DESI drugs and identical, similar or related products or combinations of these products.

(15) A pharmaceutical service for which payment is available from another public agency or another insurance or health program except for those drugs prescribed through the **[county mental health/mental retardation] county mental health/developmental services** programs as specified in § 1121.51 (relating to general payment policy).

(16) FDA approved pharmaceutical products whose indicated use is not to treat or manage a medical condition, illness or disorder.

(17) Legend and nonlegend pharmaceutical products distributed by a company that has not entered into a National rebate agreement with the Federal government as provided under **[section 4401 of OBRA '90] section 1927 of the Social Security Act (42 U.S.C. § 1396r-8)**, except for those specific drug products authorized by the Federal government as essential to the health of an MA recipient. The Department will issue **[a special list comprised] and post on the Department web site**

revisions to the list of those companies that **[signed rebate agreements with the Federal government and those products authorized as essential to the health of an MA recipient. Pharmacies are responsible for checking the list before filling the prescription] participate in the Federal Drug Rebate Program**.

(18) **[Legend and non-legend cough and cold preparations, except when prescribed for MA recipients under 21 years of age]** **[Reserved]**.

(19) Erectile dysfunction drugs unless used for an FDA approved indication other than for the treatment of sexual or erectile dysfunction.

(20) Agents when used to promote fertility.

(21) Agents used for cosmetic purposes or hair growth.

§ 1121.55. Method of payment.

(a) The Department will pay a pharmacy for a compensable legend and nonlegend drug (after deducting the applicable copayment amount, as described in § 1101.63(b) (relating to payment in full)), the **[lowest]** **lower** of the following amounts:

(1) The **[EAC for the]** drug **cost for brand name and generic drugs, including the ingredients of compounded drugs, as determined by § 1121.56a (relating to drug cost determination),** multiplied by the number of units dispensed, plus a **[$2]** **$10 professional** dispensing fee.

(2) **[The State MAC for the drug, multiplied by the number of units dispensed, plus a $2 dispensing fee]** **[Reserved]**.

(3) The provider's usual and customary charge to the general public.

(4) For MA recipients with a pharmacy benefit resource which is a primary third party payer to MA, the **[lower of the following amounts:**

(i) The EAC for the drug, multiplied by the number of units dispensed, plus a $0.50 dispensing fee.

(ii) The State MAC, multiplied by the number of units dispensed, plus a $0.50 dispensing fee] drug cost as determined by § 1121.56a, multiplied by the number of units dispensed, plus a $0.50 dispensing fee.

(b) **[The Department will pay a pharmacy for a compensable compounded prescription at the lower of the cost of all ingredients plus a $3 dispensing fee or the provider's usual and customary charge to the general public. For MA recipients with a pharmacy benefit resource which is a primary third party payer to MA, the dispensing fee shall be $0.50]** **[Reserved]**.

(c) The provider shall bill the Department at its usual and customary charge to the general public.

§ 1121.56. **[Drug cost determination]** **[Reserved]**.

[(a) The Department will base its drug cost for compensable legend and nonlegend drugs on the lower of:

(1) The EAC established by the Department.

(i) For brand name drugs, the EAC is established by the Department as one of the following:

(A) The lowest WAC listed for the drug in available Nationally recognized pricing services, plus 3.2%.

(B) If WAC data are not available from a Nationally recognized pricing service, the lowest AWP listed for the drug in available Nationally recognized pricing services, minus 14%.

(C) If both WAC and AWP cost data are available for the drug from a Nationally recognized pricing service, the lower of the two amounts.

(ii) For generic drugs, the EAC is established by the Department as one of the following:

(A) The lowest WAC listed for the drug in available Nationally recognized pricing services.

(B) If WAC data are not available from a Nationally recognized pricing service, the lowest AWP listed for the drug in available Nationally recognized pricing services, minus 25%.

(C) If both WAC and AWP cost data are available for the drug from a Nationally recognized pricing service, the lower of the two amounts.

(2) The State MAC established by the Department.

(b) The Department will update the EAC for individual drugs at least on a monthly basis as it appears in available Nationally recognized pricing services.

(c) CMS establishes lists that identify and set Federal upper limits for CMS multisource drugs and provides the listing of these drugs and revisions to the list to the Department through Medicaid manual transmittals on a periodic basis.

(d) The Department will determine the State MAC by one of the following methods:

(1) For multisource drugs, the Department will set the State MAC at the lower of the following:

(i) The upper payment limit established by the CMS.

(ii) Provided that the generic product is available at the price established by the Department from at least two wholesalers:

(A) If the generic product is available from more than one manufacturer, the base price of 150% of the lowest acquisition cost for the generic product, unless 150% of the lowest acquisition cost is not at least 120% of the second lowest acquisition cost, in which case the base price will be set at 120% of the second lowest acquisition cost.

(B) If the generic product is available from only one manufacturer, the base price is 120% of the acquisition cost for the generic product.

(2) For disposable insulin syringes, the Department will set the State MAC at the amount listed in the MA Program Fee Schedule.

(e) The Department will update the State MAC:

(1) If the State MAC for a multisource drug is set at the Federal upper payment limit established by CMS, the Department will apply the Federal upper limits for CMS multisource drugs to be effective on

the date established by CMS and will describe the update to each pharmacy enrolled in the MA Program when it is available.

(2) The Department will apply the price for all other State MAC multisource drugs every 3 months, and will distribute the update to each pharmacy enrolled in the MA Program.

(f) With the exception of the CMS multisource drugs, the Department will make further additions to the list of State MAC drugs after consultation with the Medical Assistance Advisory Committee as to whether the application of a State MAC is cost effective to the Department for a particular multisource drug. The Department will add the CMS multisource drugs to the State MAC list effective as of the effective date established by CMS.

(g) With the exception of disposable insulin syringes, the State MAC does not apply if the conditions are met as described in § 1121.53(b)(1) and (2) (relating to limitations on payment).

(h) The most common package size for the purposes of determining the product cost is one of the following:

(1) For capsules, tablets and liquids available in breakable package sizes:

(i) The listed package size if only one package size is listed.

(ii) The 100 or pint package size if more than one package size is listed.

(iii) The next smaller package size from the 100 or pint size, excluding a drug company's unit-dose package size, if more than one package size is listed other than the 100 or pint package size.

(iv) The package size closest to the 100 or pint package size, excluding a drug company's unit-dose package size, if the next smaller package is the unit-dose package size.

(2) The listed package size for all dosage forms available for all nonlegend drug products.

(3) The smallest package size for all dosage forms available in nonbreakable packages.]

(*Editor's Note*: Section 1121.56a is proposed to be added and is printed in regular type to enhance readability.)

§ 1121.56a. Drug cost determination.

(a) The Department will base its drug cost for compensable legend and nonlegend drugs for enrolled licensed pharmacies as follows:

(1) For brand name drugs:

(i) The NADAC.

(ii) If no NADAC is available, a WAC rate that equates to NADAC values published by CMS under subsection (c).

(2) For generic drugs, the lowest of:

(i) The NADAC.

(ii) If no NADAC is available, a WAC rate that equates to NADAC values published by CMS under subsection (c).

(iii) The FUL established by CMS.

(iv) The State MAC established by the Department.

(b) The ingredient cost of a 340B purchased drug shall be based on the methodology set forth in subsection (a), except that payment for the drug cost shall not exceed the 340B ceiling price, as described in section 340B(a)(1) of the Public Health Service Act (42 U.S.C. § 256b(a)(1)).

(c) The Department will update the CMS-published NADAC in the Department's claims adjudication system at least monthly.

(d) WAC rates adjusted to equate to NADAC values will be updated periodically, announced by publication of notice in the *Pennsylvania Bulletin* and made available on the Department's web site.

(e) The Department will determine the brand and generic WAC rates that equate to NADAC values by dividing the NADAC unit prices by the WAC unit prices, minus one, expressed as a percentage.

(f) CMS establishes lists that identify and set Federal upper limits for CMS multisource drugs and provides the listing of these drugs and revisions to the list to the Department.

(g) The Department will establish State MAC rates when there are two or more manufacturers of generic alternatives to the brand name product to enable the Department to realize discounts from the brand price.

(h) State MAC rates will be updated quarterly and as needed to account for marketplace price changes and drug shortages.

(i) The State MAC rates will be established by the Department as follows:

(1) *Tier 1*: Greater of 150% of the lowest-cost generic and 120% of the second lowest-cost generic for unit costs ranging from $0 to $5.

(2) *Tier 2*: Greater of 130% of the lowest-cost generic and 110% of the second lowest-cost generic for unit costs ranging from $5.01 to $20.

(3) *Tier 3*: Greater of 120% of the lowest-cost generic and 110% of the second lowest-cost generic for unit costs greater than $20.01.

(j) The State MAC does not apply if the conditions are met as described in § 1121.53(b)(1) (relating to limitations on payment).

(k) The Department will base its drug cost for compensable legend and nonlegend drugs for enrolled licensed prescribers on the lower of:

(1) For brand name drugs:

(i) The provider's usual and customary charge.

(ii) The WAC + 3.2%.

(2) For generic drugs:

(i) The provider's usual and customary charge,

(ii) The WAC + 0%,

(iii) The FUL.

(iv) The State MAC.

(l) The Department will update the WAC for individual drugs at least on a monthly basis as it appears in a Nationally recognized pricing service.

CHAPTER 1141. PHYSICIANS' SERVICES

PAYMENT FOR PHYSICIANS' SERVICES

§ 1141.60. Payment for medications **administered or** dispensed **[or ordered]** in the course of **[an office]** **a** visit.

[Physicians may be reimbursed for the actual cost of medications] **(a) Payment is made to physicians for covered brand name and generic drugs as determined by § 1121.56a(k) (relating to drug cost determination), multiplied by the number of units** administered or dispensed to an eligible recipient in the course of an office or home visit **[providing the physician is certified for dispensing by the Office of Medical Assistance, Bureau of Provider Relations]**. **Payment for these services is subject to the conditions and limitations in Chapter 1121 (relating to pharmaceutical services).** There is no **[reimbursement]** **payment made** to a physician for medical supplies or equipment dispensed in the course of an office or home visit. Payment for medical supplies and equipment is made only to pharmacies and medical suppliers participating in the Medical Assistance program.

[*Exception:*] **(b)** Physicians may bill the Department for Rho(d) Immune Globulin, intrauterine devices, eyeglasses and for immunizing biologicals and antigens and drugs not provided by the Department of Health.

CHAPTER 1142. MIDWIVES' SERVICES

PAYMENT FOR MIDWIVES' SERVICES

(*Editor's Note*: Section 1142.56 is proposed to be added and is printed in regular type to enhance readability.)

§ 1142.56. Payment for medications administered or dispensed in the course of a visit.

Payment is made to a midwife for covered brand name and generic drugs as determined by § 1121.56a(k) (relating to drug cost determination), multiplied by the number of units administered or dispensed to an eligible recipient in the course of an office or home visit. Payment for these services is subject to the conditions and limitations in Chapter 1121 (relating to pharmaceutical services).

CHAPTER 1144. CERTIFIED REGISTERED NURSE PRACTITIONER SERVICES

PAYMENT FOR CERTIFIED REGISTERED NURSE PRACTITIONER SERVICES

(*Editor's Note*: Section 1144.54 is proposed to be added and is printed in regular type to enhance readability.)

§ 1144.54. Payment for medications administered or dispensed in the course of a visit.

Payment is made to a CRNP for covered brand name and generic drugs as determined by § 1121.56a(k) (relating to drug cost determination), multiplied by the number of units administered or dispensed to an eligible recipient in the course of an office or home visit. Payment for these services is subject to the conditions and limitations in Chapter 1121 (relating to pharmaceutical services).

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