

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF AUCTIONEER EXAMINERS [49 PA. CODE CH. 1] Examination Fees

The State Board of Auctioneer Examiners (Board) amends § 1.23 (relating to auctioneer licensure examination; fees) pertaining to increased fees for examinations for licensure after September 1, 1995, as set forth in Annex A.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) and section 6 of the Auctioneer and Auction Licensing Act (act) (63 P. S. § 734.6), examinations for licensure must be prepared and administered by a professional testing organization under contract to the appropriate board. This amendment will change fees for examinations to candidates for licensure. Contract costs for examination services increased with the September 1995, examination under the new contract executed September 1, 1995.

Public notice of intention to amend § 1.23 under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. §§ 1201 and 1202) has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. Persons affected by this amendment have been given actual notice of the Board's intention to amend § 1.23 in advance of final rulemaking under section 204(2) of the CDL.

Statutory Authority

This amendment is adopted under section 812.1 of The Administrative Code of 1929 and section 6 of the act.

Fiscal Impact and Paperwork Requirements

The amendment will have no fiscal impact on the Commonwealth or its political subdivisions. Candidates for licensure by examination will be required to pay an increased fee to cover contract costs for the examination.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), a copy of the amendment was submitted on December 6, 1995, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the amendment was submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-1—732-506).

Under section 5(c) of the Regulatory Review Act, the amendment was deemed approved by the House and Senate Committees on December 27, 1995, and approved by IRRC on January 3, 1996.

Additional Information

Individuals who desire information are invited to submit inquiries to Dorna Thorpe, Board Administrator, State Board of Auctioneer Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3397.

Findings

The Board finds that:

(1) Public notice of intention to amend the regulation as adopted by this order under the procedures specified in sections 201 and 202 of the CDL has been omitted under the authority contained in section 204(3) of the CDL because the Board has, for good cause, found that the procedure specified in sections 201 and 202 of the CDL is in this circumstance, unnecessary because section 812.1 of The Administrative Code of 1929 requires candidate fees cover the cost of the examination.

(2) Persons affected by the regulation as adopted by this order have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 1, are amended by amending § 1.23 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality as required by law.

(c) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*, and apply to examinations administered on and after September 1, 1995.

WYLIE S. RITTENHOUSE,

Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 284 (January 20, 1996).)

Fiscal Note: 16A-643. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS PART I. DEPARTMENT OF STATE Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS CHAPTER 1. STATE BOARD OF AUCTIONEER EXAMINERS LICENSURE

§ 1.23. Auctioneer licensure examination; fees.

(a) The Board will schedule the auctioneer licensure examination two times each year.

(b) The applicant for auctioneer's license shall apply to the Board for admission to the licensure examination and pay the fee of \$87.

(c) If an applicant fails the examination once, the applicant may take the next scheduled examination or the examination following the next scheduled examination. If an applicant fails the licensure examination twice, the Board, upon notice to the applicant, may require the applicant to complete additional training approved by the Board.

[Pa.B. Doc. No. 96-286. Filed for public inspection March 1, 1996, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 5320]

Long-Term Structured Residences

Statutory Authority

The Department of Public Welfare (Department), by this order adopts Chapter 5320 (relating to long-term structured residences) as set forth in Annex A under the authority of section 1021 of the Public Welfare Code (62 P. S. § 1021).

Notice of proposed rulemaking was published at 23 Pa.B. 5806 (December 11, 1993).

Purpose of the Regulations

The purpose of these final regulations is to adopt licensure requirements for long-term structured residences (LTSRs) which are highly structured therapeutic residential mental health treatment facilities of no more than 16 beds. They are designed to serve persons 18 years of age or older who are eligible for hospitalization but who can receive adequate care in an LTSR. Admission is limited to individuals who require the services described in Chapter 5320. Admission may occur voluntarily under section 201 of the Mental Health Procedures Act (50 P. S. § 7201) or involuntarily under section 304, 305 or 306 of the Mental Health Procedures Act (50 P. S. §§ 7304—7306). LTSRs are required to provide services and treatment in accordance with Departmental regulations at 55 Pa. Code Chapter 5100 (relating to mental health procedures).

Need for the Regulations

The establishment and licensing of LTSRs furthers the Department's goal of establishing a comprehensive array of community-based mental health services, including alternatives to inpatient hospitalization, that are administered by the county mental health offices. LTSRs have been established as an alternative to hospital services in those county mental health service systems affected by the closure or consolidation of a State hospital. Additional programs have been proposed under county/State hospital integrated project plans that have been submitted for approval by the Department. Regulations are needed to assure appropriate care, service delivery and safety of residents in these programs.

Requirements

The requirements in § 5320.11(2) (relating to prerequisites to licensure), that an LTSR may be licensed only if it is identified in the officially submitted county plan, as well as the requirement in § 5320.32(1) (relating to

admission authorization), that the County Administrator's Office (CAO) approve all admissions, identify the CAO as the single point of accountability for provider participation, client services and financial decision making. The responsibilities of the area offices of mental health, which are a part of the Department, include the oversight and monitoring of all mental health services within their jurisdiction which are publicly and privately funded. Their responsibilities include licensing and service utilization review.

These final regulations contain the licensing requirements that must be met to obtain a certificate of compliance to operate an LTSR. These final regulations are intended to safeguard and promote the health and mental health, safety, well-being, rights and dignity of each LTSR resident.

Affected Organizations and Individuals

The primary beneficiaries of LTSR services are individuals 18 years of age or older and over who do not need hospitalization but who require mental health treatment and supervision on an ongoing 24-hour per day basis. LTSRs are new and distinct community-based residential treatment services that affect persons who require these services, their families, service providers and the CAOs that provide funding for LTSRs.

Accomplishments and Benefits

LTSRs provide a 24-hour therapeutic environment which employs active psychiatric treatment and psychosocial rehabilitation skills training in a structured residential milieu. LTSR services provide a less restrictive and less costly alternative to inpatient hospitalization. The operational policies and procedures empower residents to take an active role in their treatment and other decisions which affect their lives, and create an environment which reduces stigma, promotes independence and fosters self-esteem. The policies and procedures should be flexible enough to accommodate cultural diversity among the residents and their individual and changing needs. They are designed to gain maximum benefit from community mental health providers and other available resources while ensuring that public funds are expended efficiently.

Public Comments

The LTSR regulations were published as proposed at 23 Pa.B. 5806. Written comments, suggestions and objections were solicited within a 30-day period after the publication date. As a result of extensive comments received after the publication of the proposed regulations, and actual experience with the currently operating programs, numerous revisions were made to the proposed regulations. The final regulations now apply to additional geographical areas (see § 5320.1). The final regulations also differ from the proposed regulations in format and include language revisions to clarify the meaning of various sections. The revisions do not, however, enlarge the original purpose of proposed rulemaking.

Summary of Changes

The final regulations have also had considerable public review and input beyond the publication and response period. A workgroup consisting of representatives from the Statewide Mental Health Consumers Association, Alliance for the Mentally Ill, Community Providers Asso-

ciation, Philadelphia City Mental Health Office and the Office of Mental Health Area Offices and Headquarters staff met as needed in a collaborative effort to respond to the comments and revise the proposed regulations.

Over 30 comments were received from interested persons or organizations throughout this Commonwealth. The principal comments received were related to: changes in the rulemaking that may affect established LTSRs; the availability of LTSRs; staffing requirements; pharmaceutical arrangements, medication administration and seclusion and restraint. A summary of the comments received, and the Department's response to those comments, follows. Several general comments are listed under the relevant regulatory heading.

COMMENTS

1. *Comment:*

The Independent Regulatory Review Commission (IRRC) questioned how the changes proposed in this final rulemaking would affect LTSRs which were established and have been operating under the original proposed regulations as published at 21 Pa.B. 2020 (May 4, 1991) which proposed a significantly different set of rules.

IRRC recommended expanding and revising the waiver of standards in § 5320.101 (relating to waiver of standards). This would enable providers an opportunity to seek a waiver from a new requirement for good cause as long as the health and safety of residents is not jeopardized.

Response:

Although the final regulations differ from the originally proposed regulations in regard to Statewide expansion, format and language clarifications, the Department does not believe the revisions enlarge the original purpose of proposed rulemaking or represent a significantly different set of rules. The Department, however, agrees with IRRC's recommendation and has revised § 5320.101 to establish a more generalized waiver of standards so that providers which have been operating under the original proposed regulations would have opportunity to seek a waiver from a new requirement for good cause.

2. *Comment:*

One provider commented that there are and will be LTSR programs in areas that are still being serviced by a State hospital. In many instances, the populations of these programs may not be as severely ill as those where there is no State hospital. In cases where the population is fairly stable the provider suggested that staffing patterns and psychiatric time be adjusted to reflect the nature of the population. In instances when there would be a need for more supervision of psychiatric time, adjustments could be made to provide needed services.

Response:

Despite closings and consolidations, all areas of the State are served by State mental hospitals. Residents who do not require mental health treatment and supervision on a 24-hour per day basis are not the appropriate population for LTSRs. These residents would be more appropriately served in Community Residential Rehabilitation programs (CRRs) or less intensive residential/housing programs. Since LTSRs were designed for individuals who would otherwise be hospitalized, any adjustments to the requirements set forth in this chapter will have to occur through the waiver of standards process described in § 5320.101.

GENERAL PROVISIONS

Section 5320.1. Scope.

3. *Comment:*

In §§ 5320.1 and 5320.2 (relating to scope; and policy), it is not clear whether an individual can seek admission to an LTSR or whether LTSRs can be established in all counties Statewide. IRRC believed that the sections should not preclude a county from requesting approval to establish an LTSR through its county plan, and recommended that the language under this section be expanded to read "This chapter is applicable to counties affected by the closure or consolidation of a State mental hospital, or where a County/State hospital integrated project has been approved by the Department or where operation of LTSRs are included in a county plan."

Response:

In response to these comments, the Department has revised § 5320.1 to include references to §§ 5320.31 and 5320.32(1) and (2) (relating to admission criteria; and admission authorization). The referenced sections provide clarification on the LTSR admission criteria and admission authorization process under IRRC's recommendation. The Department also revised § 5320.1 by inserting the phrase "or where operation of LTSRs are included in an approved county plan."

Section 5320.3. Definitions.

4. *Comment:*

In several sections, references are made to the resident's designated person, guardian, next of kin or family member. It is unclear whether the references are intended to be interchangeable with "designated person" or whether the reference is to another person acting on the resident's behalf.

IRRC recommended the term "designated person" be used consistently throughout the chapter. The term "guardian" should be defined and references to family, next of kin, executor, appropriate other persons and agency should be deleted from §§ 5320.33(a), 5320.51(4)(i) and 5320.64(c)(1)(v) (relating to resident provider contract; information on resident rights; treatment plan; and resident records).

Response:

The Department agrees with this recommendation and has revised the chapter to replace the terms "family," "next of kin," "executor," "appropriate other persons" and "agency" with the term "designated person" in §§ 5320.33(a) and 5320.51. In addition, use of the term guardian (personal or legal) throughout the chapter has been deleted and the phrase "act on behalf of the resident" has been added to the definition in § 5320.3 (relating to definitions).

PROVISION OF SERVICES

Section 5320.22. Governing body.

5. *Comment:*

One provider believed § 5320.22(4) (relating to governing body) regarding the development of measurable anticipated outcomes in an LTSR is problematic. LTSRs do not have enough historical data to derive accurate predictive outcomes as the LTSR has only been operational since April 1992. Additionally, predicting therapeutic outcomes with a chronic schizophrenic population is in itself very inaccurate as regression is frequently difficult to predict.

Response:

The Department disagrees with these comments. Measurable outcome indicators are essential components of a quality improvement program and can, in fact, be developed for the program and individuals with serious mental illness. For example, changes in the frequency of symptoms or behaviors are measurable outcomes.

Section 5320.23. Access.

6. *Comment:*

This section authorizes access to the facility by community service organizations, community legal services, advocacy groups, consumer and family organizations and authorized Federal, State or local government agents. Although there is strong support for the inclusion of access by legal services, advocacy groups, consumer and family organizations and government agents, IRRC questioned the unlimited right to access by community service organizations. IRRC suggested the Department delete this reference and allow the provider to review requests by community service organizations to access the facility on a case-by-case basis.

Response:

The Department agrees with this recommendation and has deleted the phrase "access by community service organizations" and added the following sentence: "The provider will review requests by generic community service organizations to access the facility on a case-by-case basis."

Section 5320.25. Provider records.

7. *Comment:*

IRRC recommended that the Department clarify what it believes are appropriate allowable charges in order to assure that costs are standardized as much as possible in letters of agreement entered into by county administrators.

Response:

The Department agrees that clarification of this section (as well as § 5320.33) is needed. Section 5320.11 and § 5320.25 (relating to provider records) have been revised to clarify that the County Administrator/Provider Letter of Agreement delineate the services and items included in the per diem cost of care, including room and board, treatment, rehabilitation and personal care services, personal hygiene items and laundry services. Section 5320.33(c) (relating to resident/provider contract; information on resident rights) has been revised to clarify that residents may be responsible for the cost of services or items that are not included in the per diem cost of care if the items are furnished at the request of the resident.

Section 5320.26. Confidentiality.

8. *Comment:*

IRRC recommended the Department add language to ensure that confidentiality of individual records is maintained by inserting the word "individual" before the words "mental health records."

Response:

The Department agrees with this recommendation and has inserted the word "individual" before the words "mental health records."

ADMISSION AND RESIDENT/PROVIDER CONTRACT

Section 5320.31. Admission criteria.

9. *Comment:*

This section was titled "Admission, Initial Assessment Procedures and Reassessment" in the proposal. IRRC believed that § 5320.32 should be limited to the admission process and the resident/provider contract provisions and that § 5320.32(3) and (4) were repetitive of the requirements contained in § 5320.51 (relating to the treatment plan), and would be more appropriately placed in § 5320.51. IRRC further recommended that this title be amended to read "Admission and Resident/Provider Contract."

Response:

The Department agrees with these recommendations. The section has been retitled and limited to the admission process and the resident/provider contract provisions. Also, § 5320.32(3) and (4) were placed in § 5320.51.

ADMISSION AUTHORIZATION

Section 5320.32. Admission authorization.

10. *Comment:*

This subsection was titled "Assessment and Admission Authorization." IRRC recommended the title of this section be amended to read "Admission Authorization." Also, under this section, the Department should define "referring entity" in § 5320.3.

Response:

The Department agrees with these recommendations and has amended this section to read "Admission authorization" and has defined "referring entity" in § 5320.3.

Section 5320.33. Resident/provider contract; information on resident rights.

11. *Comment:*

Under subsection (a), the provider must explain the contents of the contract to the resident or the resident's guardian. IRRC questioned whether the provider could explain the contents of the contract to the resident's designated person if the guardian and designated person are not the same individual. IRRC suggested the Department add a reference to "designated person" within subsection (a). Additionally, the word "or" in subsection (a) should be replaced with the word "and" to ensure that both the resident and the legal guardian or the designated person are aware of the terms of the contract.

Response:

In response to these comments, the Department added a reference to "designated person" within subsection (a) and replaced the word "or" with the word "and" to ensure that both the resident and the Department designated person are aware of the terms of the contract. The Department also clarified the definition of "designated person" in § 5320.3.

12. *Comment:*

Under subsection (b)(1), the resident/provider contract must include the actual amount of allowable resident charged for services and items. IRRC believes the regulation should be amended to clearly require the contract to identify the actual amount for each service or item, or both, for which the provider is authorized to charge the resident, not only a total amount. Thus, the contract would clearly identify each charge for which the resident would be responsible.

Response:

As noted in response to comments regarding § 5320.25, the Department agrees that clarification of this section was needed and the suggested changes were made. See response at §§ 5320.11 and 5320.25. The Department has also revised the language in § 5320.33(c) to clarify the types of charges for which the resident could be responsible.

*REQUIREMENTS FOR DIRECT-CARE AND SUPPORT STAFF*13. *Comment:*

The preplacement and biennial physical examinations for direct care and dietary support staff are under §§ 5320.22(9) and 5320.25(5). However, there is no specific section which requires the direct-care staff and dietary support staff to have a preplacement or biennial physical examination. In addition, the proposed rulemaking required a tuberculosis and hepatitis screening. It is unclear whether the Department intends physical examinations under this rulemaking to also include the screenings. IRRC recommended the Department incorporate the requirements for physical examinations and a description of what the examinations must include in this section.

Response:

The Department agrees with these comments and has deleted the language in § 5320.22(9) and revised § 5320.25(5) to require direct-care and dietary staff to have preemployment and biennial examinations, including screening for tuberculosis and hepatitis. The Department began renumbering this section to create a specific section, § 5320.41 (relating to physical examinations), requiring staff to have physical examinations with screenings for tuberculosis and hepatitis. The Department has also changed the word "preplacement" to "preemployment."

Section 5320.42. Staffing levels.

14. *Comment:*

Section 5320.42(3) (relating to staffing level) requires a minimum of three staff persons to be awake and on duty when 10 to 16 residents are on the premises, and paragraph (4) requires two staff persons to be awake and on duty when fewer than 10 residents are on the premises. The Department does not identify which staff is required to be on duty (that is, direct care staff, support staff or either). IRRC suggested the final-form regulation specifically identify the types of staff required to meet the staffing levels.

Response:

In response to these comments, the Department has specified in § 5320.42(3) and (4) that direct-care staff are required to be awake and on duty when residents are on the premise. The Department also inserted "direct-care" at § 5320.42(8) and (9).

15. *Comment:*

IRRC suggested allowing just two staff on duty as long as another direct-care staff person is on call. Or, if the Department continues to believe that three staff persons are essential, IRRC suggested considering allowing the three staff persons to be comprised of at least two direct-care staff and one support staff during the evening hours.

Staff at one provider agency have expressed concerns that utilizing three staff persons on a midnight shift (11 p.m. to 7 a.m.) is not necessary since most of the

residents are asleep. They indicated that there is very little resident contact during the night shift. They believe that requiring three staff members to be present and awake would deplete staff from other shifts where there is a greater need for direct resident care.

Response:

The Department agrees with these recommendations and has revised the regulation to allow two direct-care staff awake and on duty as long as there is another direct-care staff on call and able to respond onsite within 30 minutes or less.

Section 5320.43. Program director and direct-care staff qualifications.

16. *Comment:*

IRRC and several staff from one provider agency questioned whether the level of education proposed is necessary. Both believe that only allowing a person with a Master's degree to qualify for these positions reduces the provider's ability to recruit and retain staff. In order to provide some flexibility for hiring practices, while at the same time ensuring that qualified staff are employed, both IRRC and the provider agency strongly suggested the Department consider also allowing individuals with a Bachelor's degree and a number of years of clinical experience (that is, 5 or 6 years) to also qualify for these positions.

Response:

In response to this comment, the Department recognizes the concerns regarding recruitment and retention; however, the Department disagrees with the suggested change. LTSRs are 24-hour treatment facilities designed for persons who are seriously mentally ill and who otherwise would be hospitalized. As such, the Department must ensure that program direction is provided by persons with graduate level clinical training for which experience is not a sufficient substitute. Furthermore, § 5320.101 allows for a waiver to address staffing variations.

17. *Comment:*

A second concern expressed by IRRC with the provisions under § 5320.43 (relating to program director and direct-care staff qualifications) related to the requirements for the program director and mental health professionals to be licensed, certified or registered by a professional licensure board. Since there are several State licensure boards, many of which are not relevant to the mental health field, IRRC suggested the Department specifically incorporate the appropriate state boards and the applicable terms (that is, licensed, registered or certified).

Response:

In response to these comments, the Department has revised § 5320.43(a)(2) and (b)(2) to clarify the requirements. The Department's reference to licensure, certification or registration is only relevant if the profession is governed by a registration, certification or licensing board in this Commonwealth.

18. *Comment:*

Subsection (c) contains qualifications for mental health workers. A mental health worker shall be a person without a graduate degree who by training and experience has achieved recognition as a mental health worker. Absent any degree requirements, the phrase "without a graduate degree" should be eliminated. IRRC questioned how one achieves recognition as a mental health worker.

IRRC strongly recommended that the Department establish specific minimum training and experience criteria and delete the phrase "has achieved recognition as a mental health worker."

Response:

The Department agrees with this recommendation and has revised this section to include minimum training and experience criteria for a mental health worker. The phrase "has achieved recognition as a mental health worker" has been deleted as suggested.

Section 5320.45. Staff orientation and training.

19. *Comment:*

IRRC believed this section should be divided into two sections since they are two separate and distinct requirements.

Under the training provisions, the regulation incorporates a number of topics to be included in the orientation and training program. In order to provide greater clarity, IRRC suggested the Department establish separate sections identifying topics to be included in the orientation program for direct care and support staff as well as another section identifying the types of topics required to be incorporated in the ongoing training program.

Response:

The Department agrees with these recommendations and has revised the regulation accordingly. Section 5320.45(3) (relating to staff orientation and training) (new section) now describes topics included in the orientation program for direct-care and support staff while § 5320.45(4) identifies the topics included in the ongoing training program.

THERAPEUTIC PROGRAM

Section 5320.51. Treatment plan.

20. *Comment:*

IRRC suggested that the provisions in § 5320.32 which relate to the assessment process and the responsibilities of the interdisciplinary team would be more appropriately placed in this section.

IRRC also believed the language in § 5320.51(1) (relating to treatment plan) should be replaced with the language currently proposed in § 5320.32(3) which more clearly explains what the initial assessment should entail. Additionally, the Department should ensure that the reassessment provisions proposed in § 5320.32(4) are moved to the therapeutic program sections.

Response:

The Department agrees with these recommendations and has revised the sections accordingly.

21. *Comment:*

One provider suggested changing § 5320.51(2) to require that the comprehensive treatment plan be developed within 30 days rather than 10 days of admission.

Response:

The Department disagrees with this suggestion. The treatment needs of residents and practical experience with existing LTSRs demonstrate that the treatment plan can and should be completed within 10 days of admission.

Section 5320.53. Medication.

22. *Comment:*

Subsection (a)(3) states that medication administration policies and procedures shall address how medication and

treatments shall be administered by the licensed staff who prepared the dose for administration and shall be given as soon as possible after the dose is prepared. The latter portion of this provision which requires administration of a dosage as soon as possible after preparation would be more appropriate if placed under a new subsection regarding medication administration. Therefore, IRRC recommended subsection (a)(3) be revised to read "How medication and treatments shall be administered by the licensed medical staff who prepared the dose for administration."

Response:

In response to this suggestion, the Department has revised this section by deleting the phrase "and must be given as soon as possible after the dose is prepared." With this change, the Department does not believe there is need for a new subsection.

23. *Comment:*

Section 5320.53(b) sets forth the circumstances under which the provider stores medication for residents. IRRC suggested subsection (b)(3) and (4) be combined to read, "Each prescription medication ordered for a resident is kept in the original prescription container labeled by the dispensing pharmacist for the sole use of the resident."

Response:

The Department agrees with this suggestion. Paragraphs (3) and (4) of subsection (b) have been combined using the recommended language.

24. *Comment:*

One provider agency suggested that § 5320.53(c)(1) and (2) under pharmaceutical services was unnecessary, redundant and increased the cost of an already expensive program. At present LTSR residents have their medication regime reviewed at least every 30 days by the treatment team.

This provider agency believed the quarterly review by a pharmacist can only determine if the medications being prescribed are in the therapeutic range or contraindicated. This should be done by the LTSR's nurse who sees the resident on a daily basis and is familiar with the individual's background and medication history.

This provider also believed an annual review of the provider's medication policies and procedures is already being conducted during the annual licensing review. In addition, in-service recommendations are already incorporated as part of the regulations under staff training.

Response:

The Department disagrees with these comments. The proposed standards are intended to meet quality program management requirements. The preparation and involvement of a pharmacist in the review of medication is essential to the proper management of the psychiatric and physical conditions and illnesses of LTSR residents.

Section 5320.54. Seclusion and restraints.

25. *Comment:*

This section sets forth the prohibition of the use of seclusion and restraints for behavior management. Under subsection (c), IRRC recommended that it is not clear whether the Department intended providers to meet the requirements of both paragraphs (1) and (2). In order to provide greater clarity, IRRC suggested the phrase "all of the following" be inserted after the word "meets" in subsection (c).

Response:

The Department requires providers to meet both paragraphs (1) and (2) and has revised this section reversing the order of (1) and (2) and using the phrase "when the following conditions are met" at subsection (c).

26. *Comment:*

Under § 5320.54(c)(1), IRRC questioned what State and local standards the Department is requiring providers to meet. IRRC recommended the Department specifically cite the standards intended so that providers have a clearer understanding of what is required by this section.

Response:

The Department agrees with this comment and has revised the subsection to include references to the following standards: 28 Pa. Code Part IV (relating to health facilities); 55 Pa. Code Chapter 5300 (relating to private psychiatric hospitals); 34 Pa. Code Chapters 49—59, National Fire Protection Agency related to Institutional Occupancy (current applicable standards of Life Safety Code); and equivalent standards of cities with 1st class status.

27. *Comment:*

IRRC commended that § 5320.54(c)(2) provides no indication of the volume, code or statute where this section appears. IRRC suggested this provision be further clarified by deleting the word "section" and specifically adding a reference to Chapter 13 (relating to use of restraints in treating patients/residents).

Response:

The Department agrees with this comment and has revised the subsection to correctly reference this citation as § 13.4 (relating to use of restraints to control involuntary movement due to organic cause or conditions). This paragraph was renumbered as (1).

PERSONAL CARE SERVICES/RESIDENT RECORDS

Section 5320.63. Resident's funds.

28. *Comment:*

Under § 5320.63(4)(iii) (relating to resident funds), the provider must assist the resident with financial arrangements if a resident's accumulated cash assets, after room and board and daily spending allowance exceeds \$200. IRRC believed this section needs further clarification regarding what is included in the room and board charge, who determines it and what is the level of the daily spending allowance and whether it is contained in the resident/provider agreement.

Response:

In response to this comment, the Department references the revisions in §§ 5320.11(3), 5320.25(12) and 5320.33(b)(6) that further clarify what items are included in the per diem cost of care as well as the resident liability. The Department has also clarified the minimum monthly amount of funds retained by the resident. The reference to "daily spending allowance" has been deleted from this subsection and § 5320.33(b)(6) has been added to require that procedures for resident access to funds be included in the provider/resident agreement.

Section 5320.64. Resident records.

29. *Comment:*

Under subsection (c), IRRC questioned the need for the inclusion of race and ethnicity in the clinical record of a resident. IRRC has found no legal basis which would

allow for the collection of this information. If the Department continues to believe the collection of this information is authorized, it should provide the legal basis and the rationale. Additionally, IRRC believed the information should be collected on a voluntary, anonymous basis.

Response:

The Department disagrees with this recommendation. The inclusion of race and ethnicity in the resident record is clinically appropriate and the Department knows of no legal basis for excluding these factors. Appropriate treatment and treatment planning must include consideration of race/ethnicity. For example, utilization and peer review cannot be appropriately conducted without consideration of these factors.

The legal basis is as follows: § 20.36 (relating to licensure or approval of facilities and agencies) cites Title VI of the Civil Rights Act of 1964, CFR 80.6—10; which incorporates by reference section 504 of the Rehabilitation Act of 1973, and the Pennsylvania Human Relations Act (43 P. S. §§ 951—963). These Federal regulations clearly require collection of this data as part of compliance reporting. In addition, the collection of race and ethnicity is required by the DPW/OMH Consolidated Community Reporting System (CCRS) as specified in the reporting manual revised: July 1, 1992.

30. *Comment:*

Under § 5320.64(c)(1)(viii), the clinical record shall contain "the most recent annual physician's examination." IRRC recommended the word "physician's" be deleted and replaced with the word "physical."

Response:

The Department agrees with this recommendation and has revised the language accordingly.

BUILDING, FIRE PROTECTION, FURNISHINGS AND MAINTENANCE

Section 5320.81. Building, physical plant and grounds.

31. *Comment:*

IRRC commented that a provider which had been licensed or approved to operate an LTSR with bed capacity in excess of 16 prior to January 1, 1993, is exempt from this subsection.

IRRC questioned the rationale for selecting January 1, 1993, as the exemption date. IRRC questioned how many LTSRs are in excess of 16 beds and how the Department will address staffing levels to ensure a safe and therapeutic environment in facilities which exceed 16 beds. IRRC strongly believed that staffing levels must be established based upon a reasonable resident/staff ratio to ensure a safe and therapeutic environment.

Response:

In response to these comments, the Department choose January 1, 1993, since it was the beginning of the year immediately preceding publication of the draft regulations. At that time, there was only one provider with bed capacity in excess of 16. There are no additional providers with bed capacity in excess of 16. LTSR regulations prohibit housing more than 16 residents. Staffing levels were established in § 5320.42.

32. *Comment:*

IRRC recommended that § 5320.81(b) be clarified to identify whether the purpose of this section is to allow for locks on common entrances or if the intent is to require the capacity to lock resident rooms.

Response:

The Department's intent is to allow for locks on common entrances, not to lock resident rooms. The language at § 5320.81 (relating to building, physical plant and grounds) has been revised to reflect the Department's intention.

WAIVER OF STANDARDS

Section 5320.101. Waiver of standards.

33. *Comment:*

The Department proposes to limit the ability to apply for waivers to only one provision of the regulation, § 5320.41(3).

IRRC believed the Department should adopt a general waiver provision which allows an LTSR to submit a waiver request to the Department from any of the specific requirements included in the chapter. IRRC recommended using waiver language under § 2620.12 (relating to waivers).

This would provide an avenue for LTSRs currently operating under a different set of requirements to continue providing the same services yet have the ability to submit a waiver request for good cause.

Response:

In response to this comment, the Department has adopted the waiver of standards language as described in Chapter 2620 (relating to personal care home licensing).

SANCTIONS

34. *Comment:*

Under the prior proposed rulemaking, the Department established an entire subchapter incorporating the conditions for denial, nonrenewal and revocation of licenses as well as an appeal process. This rulemaking omits that entire subchapter. The Department staff indicated that it was eliminated because LTSRs are subject to the sanction provisions contained in Chapter 20. IRRC suggested the Department either incorporate those provisions in Chapter 20 or specifically include a statement in the regulation that failure to comply with Chapter 5320 may result in the imposition of sanctions found in Chapter 20.

Response:

In response to this comment, the Department has included at § 5320.12 (new section) the statement "Failure to comply with this chapter may result in the imposition of sanctions found in Chapter 20 (relating to licensure or approval of facilities and agencies)."

APPENDIX A

35. *Comment:*

IRRC recommended the Department eliminate Appendix A, Community Support Principles from the rulemaking and incorporate the principles as a statement of policy.

Response:

In response to this recommendation, the Department has incorporated the Community Support Principles as a Statement of Policy as suggested by IRRC. See Subchapter L (relating to statement of policy) at 26 Pa.B. 915 (March 2, 1996).

Fiscal Impact

Public Sector

Commonwealth

LTSRs may be established only in those counties affected by the closure or consolidation of a State mental hospital, or when a county/State mental hospital integrated project has been approved by the Department or where operations of LTSRs are included in an approved county plan. As part of a State hospital bed reduction, funds previously allocated to the State hospitals will be allocated under contract to county administrators to provide community-based services, including LTSRs, for persons who are eligible for hospitalization but can receive adequate care in an LTSR.

LTSRs are treatment facilities which provide a less expensive alternative to psychiatric inpatient care. In addition to State hospital patients, patients referred from private psychiatric hospitals and psychiatric units of general hospitals may also be admitted to an LTSR. The Department must license providers and provide periodic inspections.

Political Subdivisions

The county administrator is the single point of accountability for program and financial decision making. The administrator must authorize and establish conditions for the provision of services. LTSR services are 100% State funded; however, funding needs will vary from LTSR to LTSR according to the services provided, the size of the program and the area served.

Private Sector

Payment rates will be cost-based and negotiated between providers and the CAO. Providers will be required to establish written policies for providing services, compile and maintain personnel records, service contracts with consultants, if needed, and letters of agreement with other community resources.

General Public

LTSR residents are the major group within the general public who will benefit from being in small residential treatment facilities with a home-like environment rather than large State institutions. There are the customary indirect costs to the general public when services are provided in an efficient and effective manner to persons with serious mental illness.

Paperwork Requirements

Providers will be required to establish written policies for guiding the operation of the LTSR. They will be required to maintain comprehensive individual resident records, and a schedule of fees and charges. Prior to, or upon admission, a written agreement meeting specified minimum requirements must be signed by the provider and the resident. A written policy must be established for in-service orientation and training for all staff. If the provider manages residents' funds, the provider must document deposits, receipt of funds, dispersal of funds and the current balance. Paperwork requirements will vary according to the service provided, the size of the program and the area served.

Cross References

These regulations reference Chapters 20, 4215 and 5100. The 1990 Americans with Disabilities Act (42 U.S.C.A. §§ 12101—122213), section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794) and the Protection

and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C.A. §§ 10801—10851) are also referenced.

Effective Date

The regulations will become effective upon publication as final regulations in the *Pennsylvania Bulletin*.

Sunset Date

There is no sunset date for these regulations. The effectiveness of these regulations will be evaluated as part of the Department's annual licensing inspections of programs.

In addition to the annual licensing inspections conducted by the Department, LTSRs will be monitored by the county on an ongoing basis. Section 305(7) of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4305(7)), requires county mental health/mental retardation administrators to review and evaluate facilities and to cooperate with the Department in the maintenance of established standards.

Data obtained through annual licensing inspections, together with county reviews, will be used by the Department to evaluate the effectiveness of these regulations.

Contact Person

Questions on these regulations should be directed to Barbara Dean-Johnson, Bureau of Adult Services, Office of Mental Health, Room 502, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-7666.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking, published at 23 Pa.B. 5806 (December 11, 1993), to IRRC and the Chairpersons of the House Committee on Health and Welfare and the Senate Committee on Public Health and Welfare for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered comments received from IRRC, the Committees and the public.

In accordance with section 5(c) of the Regulatory Review Act, these final-form regulations were deemed approved by the Committees on November 16, 1995, and were disapproved by IRRC on November 16, 1995.

On November 27, 1995, the Department notified the Chairpersons of the Committees and IRRC of its intention to proceed under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)). On December 27, 1995, under section 7(c) of the Regulatory Review Act, the Department submitted its report to the designated Committees and IRRC.

These amendments were deemed approved by the Committees on January 8, 1996; and were approved by IRRC on January 18, 1996.

Findings

The Department finds that:

(1) Public notice of intention to adopt the administrative regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these regulations in the manner provided in this order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

Order

The Department, acting under the Public Welfare Code, orders that:

(a) The regulations of the Department, 55 Pa. Code, are amended by adding §§ 5320.1—5320.3, 5320.11, 5320.12, 5320.21—5320.26, 5320.31—5320.33, 5320.41—5320.46, 5320.51—5320.54, 5320.61—5320.65, 5320.71—5320.74, 5320.81—5320.86, 5320.91 and 5320.101 to read as set forth in Annex A.

(Editor's Note: Sections 5320.12, 5320.45 and 5230.46 were not included in the proposal at 23 Pa.B. 5806 (December 11, 1993).)

(Editor's Note: For a statement of policy dealing with this rulemaking see 26 Pa.B. 915 (March 2, 1996).)

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

FEATHER O. HOUSTOUN,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 548 (February 3, 1996).)

Fiscal Note: 14-412. (1) General fund;

(2) Estimate for: (DOLLAR AMOUNTS IN THOUSANDS)

	[1]	[2]	[3]
Implementing year			
1991-92 is	\$ 425	\$7,446	\$ 0
(3) 1st succeeding year			
1992-93 is	\$1,451	\$7,446	\$ 0
2nd succeeding year			
1993-94 is	\$ 0	\$ 0	\$ 9,479
3rd succeeding year			
1994-95 is	\$ 0	\$ 0	\$13,964
4th succeeding year			
1995-96 is	\$ 0	\$ 0	\$14,243
5th succeeding year			
1996-97 is	\$ 0	\$ 0	\$14,243

(4) Three year history of program costs: (DOLLAR AMOUNTS IN THOUSANDS)

	[1]	[2]	[3]
FY 1993-94	0	0	\$386,922
FY 1992-93	\$316,217	\$42,940	new approp. 93-94
FY 1991-92	\$303,247	\$44,497	new approp. 93-94

(7) Appropriation Title: Department of Public Welfare—State Mental Hospitals (SMH) [1], Closing of Philadelphia State Hospital [2] and Mental Health Services [3];

(8) recommends adoption. Funds are included in the 1995-96 Community Hospital Integrated Projects Programs (CHIPPS) portion of the Mental Health Services appropriation to cover this cost.

Annex A

TITLE 55. PUBLIC WELFARE

PART VII. MENTAL HEALTH MANUAL

CHAPTER 5320. REQUIREMENTS FOR LONG-TERM STRUCTURED RESIDENCE LICENSURE

Subch.

- A. GENERAL PROVISIONS
- B. GENERAL REQUIREMENTS
- C. PROVISION OF SERVICES
- D. ADMISSION AND RESIDENT/PROVIDER CONTRACT
- E. REQUIREMENTS FOR DIRECT-CARE AND SUPPORT STAFF
- F. THERAPEUTIC PROGRAM
- G. PERSONAL CARE SERVICES/RESIDENT RECORDS
- H. QUALITY IMPROVEMENT/SERVICE UTILIZATION
- I. BUILDING, FIRE PROTECTION, FURNISHINGS AND MAINTENANCE
- J. FOOD SERVICE
- K. WAIVER OF STANDARDS

Subchapter A. GENERAL PROVISIONS

Sec.

- 5320.1. Scope.
- 5320.2. Policy.
- 5320.3. Definitions.

§ 5320.1. Scope.

This chapter establishes minimum standards for the operation of LTSRs for individuals with serious mental illness. See §§ 5320.31 and 5320.32(1)(2) (relating to admission criteria; and admission authorization) for information pertaining to admission criteria and authorization. This chapter is applicable only to counties affected by the closure or consolidation of a State mental hospital, or where a county/State hospital integrated project has been approved by the Department or where operation of LTSRs are included in an approved county plan.

§ 5320.2. Policy.

An LTSR is a highly structured therapeutic residential mental health treatment facility designed to serve persons 18 years of age or older and over who are eligible for hospitalization but who can receive adequate care in an LTSR. Admission is limited to individuals who require the services described in this chapter. Admission may occur voluntarily under section 201 of the act (50 P. S. § 7201) or involuntarily under section 304, 305 or 306 of the act (50 P. S. §§ 7304—7306).

§ 5320.3. Definitions.

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

Act—The Mental Health Procedures Act (50 P. S. §§ 7101—7503).

CPR—Cardio-Pulmonary Resuscitation.

County administrator—The person appointed or designated to carry out the duties specified in section 305 of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4305).

Department—The Department of Public Welfare of the Commonwealth.

Designated person—A person chosen by the resident and documented in the resident's record to act, on behalf of the resident or be notified in case of emergency, termination of service, LTSR closure or other situations

as indicated by the resident or as required by this chapter. The designated person could be the resident's family, next-of-kin, legal or personal guardian, executor, appropriate other person or agency.

Direct-care staff—A mental health professional or mental health worker employed by the LTSR provider either directly or under contract, who through education and experience is qualified to oversee or directly provide mental and social services to adults under this chapter. The term does not include support staff such as clerical, dietary, maintenance or fiscal personnel.

Immobile resident—An individual who is unable to move from one location to another or has difficulty in understanding and carrying out instructions without the continual and full assistance of other persons, or is incapable of independently operating a device, such as a wheelchair, prosthesis, walker or cane to exit a building.

LTSR—long-term structured residence—A highly structured therapeutic residential mental health treatment facility for adults.

License—A certificate of compliance issued under Chapter 20 (relating to licensure or approval of facilities and agencies).

Provider—The legal entity to which the license is issued.

Referring entity—The individual or organization referring a person for admission to an LTSR. Referrals can come from self, family, friends, emergency rooms, other residential facilities, psychiatric hospitals, physicians, mental health centers, and the like.

Support staff—A nonmental health professional or mental health worker employed by the LTSR provider either directly or under contract, who does not oversee or directly provide mental and social services to adults under this chapter. The term includes staff such as clerical, dietary, maintenance or fiscal personnel.

Therapeutic environment—A treatment milieu designed to facilitate the acquisition of behaviors necessary for the resident to function with as much self-determination and independence as possible and to prevent or decelerate regression or loss of optimal functioning.

Subchapter B. GENERAL REQUIREMENTS

Sec.

- 5320.11. Prerequisites to licensure.
- 5320.12. Sanctions.

§ 5320.11. Prerequisites to licensure.

To obtain licensure to operate an LTSR, a provider shall:

- (1) Comply with Chapter 20 (relating to licensure or approval of facilities and agencies).
- (2) Be identified in the approved county plan or its amendments as specified in Chapter 4215 (relating to annual plan and estimates of expenditures).
- (3) Have a letter of agreement between the provider and the county administrator's office. The agreement will include:
 - (i) Admission and discharge authority and procedure.
 - (ii) Charges for care, including room and board, treatment and rehabilitation services, personal hygiene and laundry services and other personal care services.
 - (iii) Charges for residents' care may not exceed the resident's current monthly income reduced by a minimum personal allowance of at least \$60.

(iv) Charges for residents' care may not exceed the actual documented costs of services.

(v) Payment mechanisms for LTSR services, including charges for which the resident may be directly billed.

(vi) A dispute resolution mechanism.

§ 5320.12. Sanctions.

Failure to comply with this chapter may result in the imposition of sanctions found in Chapter 20 (relating to licensure or approval of facilities and agencies).

Subchapter C. PROVISION OF SERVICES

Sec.

- 5320.21. Contracted services.
- 5320.22. Governing body.
- 5320.23. Access.
- 5320.24. Access by Pennsylvania Protection and Advocacy.
- 5320.25. Provider records.
- 5320.26. Confidentiality.

§ 5320.21. Contracted services.

To meet the needs of residents, some services are provided under agreements with outside sources. The provider shall have a written agreement with each outside source to furnish the necessary services as stipulated by the County Administrator/Provider Letter of Agreement. The provider is responsible for upholding service stipulations contained in the Letter of Agreement between the county administrator and the provider, even if the provider subcontracts for that service. The LTSR provider agreement with outside providers shall do the following:

(1) Set forth the responsibilities, functions, objectives, scope, cost and nature of the service and other terms agreed to by both parties.

(2) Contain a statement that the LTSR recognizes that it is responsible for ensuring that the contracted services meet the standards specified in this chapter.

§ 5320.22. Governing body.

An LTSR shall be operated by either a nonprofit corporation established under 15 Pa.C.S. Part I, Subpart C (relating to nonprofit corporations) or a for-profit corporation established under 15 Pa.C.S. Part I, Subpart B (relating to business corporations). The corporation's governing body has legal responsibility for the operation of the facility. The governing body shall:

(1) Adopt written policies for its own operation which include:

(i) Criteria for the qualifications and methods of selection for governing body membership.

(ii) Frequency of meetings.

(iii) Procedures for conducting business.

(iv) Provisions for disclosure by members of conditions that may create a conflict of interest and procedures for dealing with conflict of interest situations.

(2) Select a program director qualified under § 5320.42 (relating to staffing levels) who shall supervise the LTSR in accordance with the policies of the governing body and be officially responsible to the governing body.

(3) Conduct an annual review and evaluation of the LTSR's program activities, policies, procedures and program goals. This annual review and evaluation shall be documented.

(4) Adopt written program goals and objectives, including measurable anticipated outcomes.

(5) Develop and document the organizational structure.

(6) Administer funds needed to meet the written program goals and objectives.

(7) Develop, review and approve the annual budget and its modifications. These activities shall be documented.

(8) Develop and maintain written personnel policies for all staff.

(9) Develop written policies prohibiting discrimination against residents, prospective residents and all staff on the basis of age, race, sex, religion, handicap or disability, ancestry and ethnic origin, economic status or sexual preference, subject to applicable State and Federal statutes, including Chapter 5100 (relating to mental health procedures), section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794) and the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213).

(10) Develop written policies to maintain a clean, healthful and therapeutic environment.

(11) Document provisions made to meet the laundry, food service, housekeeping and maintenance requirements of this chapter.

(12) Oversee the provision of services specified in this chapter.

(13) Adopt written policies for the operation of the LTSR which shall include:

(i) The protection of residents' rights as set forth in §§ 5100.51—5100.56 (relating to patient rights).

(ii) A resident grievance procedure guaranteeing a written response to the resident by the program director when informal methods of resolving complaints are unsuccessful.

(iii) Site specific policies and schedules for fire and emergency evacuation drills.

(iv) Medication policies consistent with § 5320.53 (relating to medication).

(v) Policies covering the investigation and reporting of allegations of resident abuse.

(14) Develop written policies regarding the resident/provider contract as specified in § 5320.33 (relating to resident/provider contract; information on resident rights).

(15) Review and document reported allegations of violations of resident rights in the LTSR and report the results of the review to the county administrator.

(16) Maintain copies of policies applicable to the LTSR onsite, and make them readily available to residents, family members and visitors.

(17) Comply with § 5100.11(a) (relating to adequate treatment), which requires compliance with other relevant statutes, regulations and professional standards.

(18) Comply with this chapter when there is a conflict or inconsistency with the provision of any other regulation.

§ 5320.23. Access.

The provider shall permit community legal services, advocacy groups, mental health consumer and family organizations and authorized Federal, State or local government agents reasonable access to the facility and its residents. The provider shall review requests by generic community service organizations to access the facility on a case-by-case basis.

§ 5320.24. Access by Pennsylvania Protection and Advocacy.

The provider shall permit access by employes and legal counsel of Pennsylvania Protection and Advocacy (PPA) to the facility and its records, residents and staff under the Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988 (42 U.S.C.A. §§ 10801—10851).

§ 5320.25. Provider records.

Provider records shall, at a minimum, contain copies of the following:

- (1) Required inspection reports, certifications or licenses by State and local agencies.
- (2) Contracts with outside service providers.
- (3) Affirmative action and nondiscrimination policies.
- (4) Policies and procedures required by this chapter.
- (5) Preemployment and biennial physical examinations and screening results for direct-care and dietary support staff. These shall be kept in a separate confidential file.
- (6) Job descriptions for all staff.
- (7) Credentials or qualifications of direct-care staff as required by this chapter and evidence of verification of credentials.
- (8) Records of all staff orientation and training as required under § 5320.45 (relating to staff orientation and training).
- (9) Staff work schedules, including payroll records and time sheets.
- (10) Provider/resident contracts as described in § 5320.33 (relating to resident/provider contract; information on resident rights).
- (11) The LTSR's "house" rules.
- (12) A schedule of allowable resident fees or charges signed, as approved, by the county administrator or a designee. The County Administrator/Provider Letter of Agreement shall include a definition of the service items included in the per diem cost of care, including room and board, treatment, rehabilitation and personal care services, personal hygiene items and laundry services. See § 5320.11(3) (relating to prerequisites to licensure).
- (13) Resident activity schedules. Current schedules shall be posted in a resident accessible area and outdated schedules shall be kept in provider records for 1 year.
- (14) Other records mandated by Federal, State and local statutes and regulations.

§ 5320.26. Confidentiality.

Providers of LTSR services shall be responsible for ensuring that confidentiality of individual mental health records is maintained in accordance with §§ 5100.31—5100.39 (relating to confidentiality of mental health records).

Subchapter D. ADMISSION AND RESIDENT/PROVIDER CONTRACT

- Sec.
 5320.31. Admission criteria.
 5320.32. Admission authorization.
 5320.33. Resident/provider contract; information on resident rights.

§ 5320.31. Admission criteria.

To be eligible for admission to an LTSR, a prospective resident shall:

- (1) Be 18 years of age or older.

(2) Have had a physical examination and psychiatric evaluation not more than 6 months prior to application.

(3) Qualify for voluntary treatment under section 201 of the act (50 P.S. § 7201), or involuntary treatment under section 304, 305 or 306 of the act (50 P.S. §§ 7304—7306).

(4) Have a physician's certification that the applicant does not require hospitalization, nursing facility care or a level of care more restrictive than an LTSR, written within 30 days before admission.

(5) Evidence a severe psychosocial disability as a result of serious mental illness that indicates a less restrictive level of care as inappropriate.

§ 5320.32. Admission authorization.

A person will not be admitted without an assessment and admission authorization. The provider shall ensure that the written assessment and admission authorization includes:

- (1) Approval by the county administrator.
- (2) An assessment of the prospective resident's needs by the referring entity prior to admission. The assessment will include, at a minimum, the mental, physical and social needs of the prospective resident.

§ 5320.33. Resident/provider contract; information on resident rights.

(a) Within 24 hours of a resident's admission, the provider shall develop a written contract with the resident that meets the minimum requirements listed in subsection (b). The provider shall explain the contents of the contract to the resident and designated person, if any. The provider shall sign the contract and shall request the resident's signature. If the resident refuses to sign, the provider shall document the attempts made to secure the resident's signature. The provider shall ensure that the resident's refusal to sign has no bearing on the treatment or services subsequently provided.

(b) The resident/provider contract shall include, at a minimum, the following:

- (1) The actual amount of allowable resident charges for each service or item.
- (2) The party responsible for payment.
- (3) The method for payment of long distance or collect charges for telephone calls.
- (4) The conditions under which refunds will be made.
- (5) The financial arrangements if assistance with financial management is to be provided.
- (6) Limits on access to personal funds.
- (7) The LTSR "house rules."
- (8) The conditions under which the contract may be terminated, including cessation of operation of the LTSR.
- (9) A statement that the resident is entitled to at least 30 days' advance notice, in writing, of the provider's intent to change the contract.

(c) Residents may be responsible for the cost of services or items not included in the per diem cost of care if these items are furnished at the request of the resident.

(d) In conjunction with explaining the contract, the provider shall give, and explain to, the resident written information on the resident's rights, on grievance procedures and on access to advocates, as specified at § 5100.52 (relating to statement of principle).

Subchapter E. REQUIREMENTS FOR DIRECT-CARE AND SUPPORT STAFF

Sec.

- 5320.41. Physical examinations.
- 5320.42. Staffing levels.
- 5320.43. Program director and direct-care staff qualifications.
- 5320.44. Staff supervision.
- 5320.45. Staff orientation and training.
- 5320.46. Interdisciplinary treatment team.

§ 5320.41. Physical examinations.

The provider shall require and document preemployment and biennial physical examinations for direct-care and support staff to include screening for:

- (1) Tuberculosis
- (2) Hepatitis

§ 5320.42. Staffing levels.

The provider of LTSR services shall:

(1) Retain staff having an appropriate combination of education, work experience and training to meet the special needs of the population being served so that the service and program standards of this chapter are maintained.

(2) Retain full-time staffing levels sufficient to provide active treatment, psychosocial rehabilitation and 24-hour supervision on weekdays, weekends and holidays.

(3) Have a minimum of two direct-care staff persons awake and on duty within the LTSR whenever 10 to 16 residents inclusive are on the premises. A third direct-care staff person shall be either onsite or available to respond onsite within 30 minutes.

(4) Have a minimum of two direct-care staff, awake and on duty within the LTSR whenever fewer than 10 residents are on the premises.

(5) Have sufficient psychiatric time available to meet the psychiatric needs of the resident. At least 1/2 hour of psychiatric time per resident per week is required.

(6) Employ the program director on a full-time basis.

(7) Employ a mental health professional as provided in § 5320.43(b) (relating to program director and direct-care staff qualifications) onsite for at least 8 out of every 24 hours. This requirement may be met by the presence of the program director.

(8) Employ substitute staff with equivalent qualifications when staff are absent so that minimum direct-care staffing requirements are always met.

(9) Have direct-care staff certified in CPR and first aid on duty 24 hours a day.

§ 5320.43. Program director and direct-care staff qualifications.

(a) The program director shall:

(1) Have a Master's degree in a generally recognized clinical discipline and 2 years of mental health clinical experience.

(2) Be registered, licensed or certified to practice his profession, if that profession is governed by a registration, licensing or certification board in this Commonwealth.

(b) A mental health professional shall:

(1) Have a Master's degree or higher in a generally recognized clinical discipline and 1 year of mental health clinical experience.

(2) Be registered, licensed or certified to practice in his profession, if that profession is governed by a licensing board in this Commonwealth.

(c) A mental health worker shall be a person who has completed 12 semester hours of college training in a mental health related field or has at least a high school diploma or equivalency and 6 months of formal training in mental health or a related field.

§ 5320.44. Staff supervision.

The program director shall oversee supervision of the staff, including:

- (1) Maintenance and review of resident care records.
- (2) Annual evaluations of job performance.
- (3) Orientation and training programs.

§ 5320.45. Staff orientation and training.

The program director shall oversee orientation and training of the staff, including:

(1) In-service and out-service training relevant to the needs of the population being served by the facility.

(2) A written policy for orientation and training of direct care and support staff according to the following criteria:

(i) Full-time staff, defined as working 30 hours per week or more, shall receive a minimum amount of orientation as follows:

- (A) Direct care staff—20 hours.
- (B) Support staff—4 hours.

(ii) Regularly scheduled part-time staff, defined as working less than 30 hours per week, shall receive a minimum amount of orientation as follows:

- (A) Part-time direct care staff—10 hours.
- (B) Part-time support staff—2 hours.

(3) Written documentation that an orientation program includes the following topics:

- (i) Program philosophy, mission statement, goals and objectives.
- (ii) Review and update of all policies and procedures.
- (iii) Infection control including universal precautions, risk reduction and HIV education.
- (iv) Confidentiality.
- (v) Safety, fire safety and evacuation procedures.
- (vi) Resident rights as specified at §§ 5100.51—5100.56 (relating to patient rights).
- (vii) Conflict resolution (direct-care staff only).
- (viii) Crisis prevention, management and reporting.
- (ix) Abuse prevention and reporting.
- (x) An overview of the main effects and side effects of medication (direct-care staff only).
- (xi) Interdisciplinary treatment process and treatment planning (direct-care staff only).
- (xii) Quality improvement and service utilization (direct-care staff only).
- (xiii) Documentation and reporting mechanisms (direct-care staff only).

(4) Written documentation that ongoing training includes review and update of all policies and procedures including those listed under topics for orientation.

(5) Orientation shall be completed before the direct-care staff has independent, unsupervised, interaction with residents.

§ 5320.46. Interdisciplinary treatment team.

(a) The interdisciplinary treatment team shall be comprised of at least three mental health professionals who are appointed by the program director and who are involved in the resident's treatment. At least one member of the treatment team shall be a physician. The other members shall represent different clinical disciplines.

(b) The director of the interdisciplinary treatment team shall be appointed by the program director and be a physician or a licensed psychologist with a clinical background. The program director may serve as one of the three members of the treatment team. The director of the interdisciplinary treatment team shall be responsible for:

(1) Assuring that the resident, and the resident's family if the resident consents, is involved in the treatment planning process. The director shall document efforts to maintain this involvement and the results of these efforts.

(2) Implementing and reviewing the treatment plan and coordinating treatment service delivery with service providers.

(3) Utilizing external specialty consultants when needed.

(4) Assuring that direct-care staff and consulting professionals participate in the development, implementation and review of the treatment plan and that they have credentials in the use of the modalities proposed in the plan.

Subchapter F. THERAPEUTIC PROGRAM

- Sec. 5320.51. Treatment plan.
- 5320.52. Review and periodic reexamination.
- 5320.53. Medication.
- 5320.54. Seclusion and restraints.

§ 5320.51. Treatment plan.

The interdisciplinary treatment team shall:

(1) Complete an initial assessment, on admission by the interdisciplinary team of the resident's mental, physical and social needs including a mobility assessment.

- (i) Reflect the reason for the resident's admission.
- (ii) Indicate what less restrictive alternatives to an LTSR were considered and why they were not utilized.

(2) Develop an initial treatment plan, within 72 hours, based on the initial assessment by the interdisciplinary team.

(3) The plan, developed with the participation of the resident or a designee, shall identify the problem areas, initial goals and objectives for the resident to meet, modalities of treatment, and responsible staff indicated in helping the resident meet their goals.

(4) Develop a comprehensive treatment plan within 10 days of admission. The plan shall:

- (i) Be formulated, to the extent feasible, with the participation of the resident. With the resident's consent, designated persons could participate in the planning process.
- (ii) Be based upon diagnostic evaluation of the resident's medical, psychological, social, cultural, behavioral, familial, educational, vocational and developmental strengths and needs.

(iii) Set forth measurable, time limited treatment goals and objectives and prescribe an integrated program of therapies, activities, experiences and appropriate education designed to meet these goals and objectives.

(iv) Specify the person responsible for carrying out the modalities described in the plan.

(v) Result from the collaborative recommendation of the resident's interdisciplinary treatment team.

(vi) Be easily understood by a lay person and a copy of the current treatment plan shall be available for review by the person in treatment.

(vii) Address major psychiatric, psychosocial, medical, behavioral and rehabilitative needs of the resident and the manner in which they are to be met, including those needs to be addressed by contractors who are not employed by the LTSR.

§ 5320.52. Review and periodic reexamination.

The interdisciplinary treatment team shall review treatment plans at least every 30 days or more frequently as the resident's condition changes. A report of the review and findings and the resident's progress toward meeting program goals and objectives shall be documented by the interdisciplinary team in the resident's record.

(1) The interdisciplinary treatment team shall maintain a record of each reexamination and review to include:

- (i) A report of the reexamination.
- (ii) A brief description of the treatment provided to the person during the period preceding the reexamination and the results of that treatment.

(iii) Continuation or revision of the individual treatment plan for the next period.

(iv) Criteria for discharge and recommendation for discharge if these criteria have been met.

(2) Changes to the treatment plan and the reasons for the changes shall be made by the interdisciplinary treatment team and recorded in the resident's record as a progress note or on another form specifically designed for that purpose.

(3) The record shall include information required by § 5100.16 (relating to review and periodic reexamination).

(4) Reassessment of each resident's mental, physical and social needs, including a mobility assessment as follows:

- (i) Annually.
- (ii) If the condition of the resident materially changes prior to the annual assessment.

(iii) At the request of the county administrator or the Department if there is cause to believe that an additional assessment is required.

§ 5320.53. Medication.

(a) The provider shall establish and implement written medication policies and procedures that conform to Pennsylvania law. Medication administration policies and procedures shall address:

- (1) How the education of residents regarding their medication will be accomplished.
- (2) How residents who need assistance with medication prescribed by a physician for self-administration receive it.

(i) For residents who need assistance, the least assistance necessary should be provided within the context of a planned program toward self-administration of medication.

(ii) Assistance with self-medication including handling the medication containers or taking medication out of its container for the resident is considered medication administration and shall be done by licensed medical staff.

(3) How medications and treatments shall be administered by the licensed medical staff person who prepared the dose for administration.

(4) Documentation of the written orders provided by the attending physician for each resident receiving medication.

(5) Recording of physicians' orders in each resident's clinical record that is reviewed, renewed and signed by the physician every 30 days.

(6) Documentation of the reason a prescribed medication was not given and notice of same to the prescribing physician.

(7) The taking and recording of telephone orders by only licensed medical staff, pharmacists or other individuals authorized by law to accept a physician's telephone orders for medication.

(i) Oral orders are recorded immediately on the resident's record, dated and signed by the person receiving the order.

(ii) Oral orders are countersigned by the prescribing physician within 48 hours.

(8) Training by a physician or other licensed medical staff person that will cover, at minimum, medications used by the residents, their purposes and function, major side effects and recognition of signs that the medication is not being taken or is being misused.

(b) The circumstances under which the provider stores medication for residents shall include the following limitations:

(1) Only medications which are prescribed for self-administration or that will be administered by an individual appropriately licensed to administer medication is stored in the LTSR.

(2) Medications stored in the LTSR are kept in a locked container in a locked room.

(3) Each prescription medication ordered for a resident is kept in the original prescription container labeled by the dispensing pharmacist for the sole use of the resident.

(4) If over-the-counter drugs are maintained in the facility, they will bear the original label and the name of the resident for whom the drug is ordered.

(c) Pharmaceutical services shall include:

(1) A written quarterly review of the drug regimen of each resident by a licensed pharmacist and the findings submitted to the program director and prescribing physicians.

(2) A pharmacist or licensed medical staff annual review of the provider's medication policies and procedures including inspection of the medication storage areas. A written report of the review including inservice training recommendations, if any, is submitted to the program director.

(3) A policy developed or approved by a pharmacist that specifies the disposition of discontinued, unused, outdated or deteriorated medication.

(4) A written procedure for accessing pharmaceutical services on an emergency basis.

§ 5320.54. Seclusion and restraints.

(a) The use of seclusion is prohibited in LTSRs.

(b) The use of restraints for behavior management is prohibited in LTSRs.

(c) The use of restraints to promote body alignment, positioning and physical functioning is allowable in an LTSR only when the following conditions are met:

(1) The requirements of § 13.4 (relating to use of restraints to control involuntary movement due to organic causes or conditions).

(2) State or local standards for hospital, nursing home and residential care occupancy governing these facilities when a resident's mobility is compromised by the use of this type of restraint. See, for example, 28 Pa. Code Part IV (relating to health facilities); 34 Pa. Code Chapters 49—59, National Fire Protection Agency related to institutional occupancy (current applicable standards of Life Safety Code) and equivalent standards of cities with 1st class status; and Chapter 5300 (relating to private psychiatric hospitals).

Subchapter G. PERSONAL CARE SERVICES/RESIDENT RECORDS

Sec.	
5320.61.	Tasks of daily living.
5320.62.	Personal care.
5320.63.	Resident funds.
5320.64.	Resident records.
5320.65.	Recordkeeping.

§ 5320.61. Tasks of daily living.

The direct-care staff shall provide residents with assistance and skill training in tasks of daily living as needed. These tasks include:

- (1) Securing transportation.
- (2) Shopping.
- (3) Making and keeping appointments.
- (4) Care of personal possessions.
- (5) Use of the telephone.
- (6) Use of interpersonal skills.
- (7) Self-care skills.
- (8) Use of social and leisure activities.
- (9) Securing health care.
- (10) Money management skills.

§ 5320.62. Personal care.

The direct-care staff shall provide residents with assistance and skill training in personal care, as needed, including the following:

- (1) Bathing.
- (2) Oral hygiene.
- (3) Hair grooming and shampooing.
- (4) Dressing and care of clothes.
- (5) Shaving.

§ 5320.63. Resident funds.

The provider shall develop written policies and procedures addressing:

(1) Costs and liabilities for service according to the Letter of Agreement between the LTSR provider and the county administrator, described in § 5320.11 (relating to prerequisites to licensure) and in the resident/provider contract described in § 5320.33 (relating to resident/provider contract; information on resident rights).

(2) Training for residents who require assistance in the management of their financial affairs.

(3) Maintenance of a separate and current individual record of financial transactions made on behalf of the resident that is available on request to the resident or the resident's designated person, if any.

(4) Financial assistance by the provider, which shall include:

(i) Written receipts and quarterly statements of transactions, deposits and expenditures made on behalf of residents as well as disbursement of funds. The provider shall obtain written acknowledgement by the resident of the receipt of funds.

(ii) Provisions for the availability to the resident of documented accounting of deposits, receipts of funds, dispersal of funds and the current balance.

(iii) Assistance with financial arrangements if a resident's accumulated cash assets (after per diem care costs) exceeds \$200. The provider shall notify the resident and offer assistance in establishing an interest-bearing account in the resident's name at a local financial institution protected by the Federal Deposit Insurance Corporation, or another appropriate arrangement indicated by the resident.

(iv) Transfer of the resident's funds and possessions to the administrator or the executor of the resident's estate, together with an itemized written account upon the death of a resident. A signed receipt shall be obtained and retained by the provider.

(v) Providing the resident with an itemized written account of funds upon termination of service. A balance remaining on the resident's account with the provider shall be immediately returned to the resident.

§ 5320.64. Resident records.

(a) The provider shall maintain individual resident records which shall be reviewed by the resident or a designee and the Department or its authorized agents upon request.

(b) The provider shall retain resident records for at least 4 years after the resident has left the LTSR.

(c) The provider shall divide the resident records into two sections: a clinical and nonclinical section.

(1) The clinical section of the resident records shall, at a minimum, contain the following information:

- (i) The resident's name.
- (ii) The resident's gender, race and ethnicity.
- (iii) The resident's birth date.
- (iv) The resident's Social Security number.

(v) The name, phone number and address of the designated person to be contacted in case an emergency, illness or injury, transfer, termination of service, or death occurs to the resident or in the case of LTSR closure.

(vi) The names and telephone numbers of the resident's personal physician and dentist, if any.

(vii) The dates of entrance into the LTSR, transfers and discharges.

(viii) The most recent annual physical examination.

(ix) The principal mental health diagnosis as designated in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, (DSM IV) or most recent edition available from the American Psychiatric Association, 1700 18th Street, NW, Washington, D.C. 20009. The International Classification of Diagnoses, Clinical Modification (ICD-9-CM), available from HCIA, Inc., 300 East Lombard Street, Suite 1500, Baltimore, Maryland 21202, telephone (800) 568-3282, shall be used for the purpose of classifying diseases.

(x) A copy of the resident's treatment plan and progress notes describing the treatment and rehabilitative services provided with the resident's response to those services as well as reviews and periodic reexaminations.

(xi) A copy of the written contract between the provider and the resident.

(xii) Physicians' orders for medication to be administered at the LTSR as well as other medical orders to be carried out at the LTSR, and records of medication administration.

(xiii) The initial assessment and most recent update.

(xiv) Dietary restrictions, if any.

(2) The nonclinical section of the resident records shall, at a minimum, contain the following information:

(i) An inventory of the personal property, except consumable items, which the resident brings to the LTSR.

(ii) An inventory of the resident's property entrusted to the provider for safekeeping.

(iii) The financial records of the resident receiving assistance with financial management.

(iv) The reason for the termination of services, or transfer of the resident or reason for death, as applicable, to be included as part of a discharge summary.

(v) Documentation of the resident's current commitment status.

(vi) Written authorization for admission signed by the county administrator.

§ 5320.65. Recordkeeping.

Provision of services and the resident's progress toward treatment goals shall be documented by direct-care staff completing a progress note in the resident's record at least weekly, or more often as warranted by specific changes in the resident's behavior status. Additionally, special treatment interventions ordered in the treatment plan shall be documented by the direct-care or consulting direct-care staff authorized to provide the special treatment on a monthly basis or more frequently if warranted.

Subchapter H. QUALITY IMPROVEMENT/SERVICE UTILIZATION

- Sec. 5320.71. Quality improvement program.
- 5320.72. Indicators for duration of stay.
- 5320.73. Ancillary support services.
- 5320.74. Health services.

§ 5320.71. Quality improvement program.

The provider shall have a written quality improvement (QI) plan and program that the program director reviews for the quality and appropriateness of services provided and monitors for compliance with standards of treatment and care. The plan shall:

(1) Specify who has responsibility for QI activities, to whom findings are reported, the frequency of reviews,

what critical indicators are to be evaluated and acceptable levels for the critical indicators.

(2) Have indicators of quality care that include at least the following:

- (i) The level of resident satisfaction and program input.
 - (ii) The level of family satisfaction and program input.
 - (iii) Appropriateness, completeness, timeliness and implementation of the treatment plans.
 - (iv) Case and trend review of crisis events and unusual situations.
 - (v) Direct-care staff performance.
 - (vi) Clinical case or peer reviews, quarterly or more often as indicated.
 - (vii) Medications management, including errors and adverse effects.
 - (viii) The appropriate documentation in the resident's record.
- (3) Include the names of the individuals who participated in the quality improvement activities and plans of correction.

§ 5320.72. Indicators for duration of stay.

Decisions which determine the duration of stay shall take into account:

- (1) The resident's needs, therapeutic requirements and recommendations of the interdisciplinary treatment team.
- (2) The commitment status of the resident.
- (3) Measurable indicators established by the provider that address expectations in the following areas in determining resident duration of stay.
 - (i) Resident and program outcomes.
 - (ii) Stability of the resident's psychiatric condition.
 - (iii) Stability of the resident's medication regime.
 - (iv) The length of time without the need for acute psychiatric interventions.
 - (v) The attainment of treatment goals.
 - (vi) Successful trial leaves.
 - (vii) The establishment of a support system.
 - (viii) A plan for continuity of care.

§ 5320.73. Ancillary support services.

The provider shall either directly or through arrangement, provide services needed by the residents. To provide services that are not available at the LTSR, the provider shall:

- (1) Collaborate with the county administrator's office case management services, and other programs to provide services as identified by the treatment plan and to ensure continuity of care.
- (2) Ensure that transportation is available for residents who must be transported for services, recreation and other activities.

§ 5320.74. Health services.

The LTSR provider shall:

- (1) Develop written arrangements for providing routine and emergency medical and dental care for residents.
- (2) Notify the resident's designated person and the county administrator or a designee who shall ensure whatever assistance is necessary in making arrangements

for the resident's transfer to an appropriate facility. A physician shall determine if the resident's physical condition indicates the need for a transfer to a hospital, nursing home or rehabilitation center.

(3) Have first aid supplies available and adhere to current Centers for Disease Control and the Department of Health's recommendations for universal precautions in the administration of first aid and CPR.

Subchapter I. BUILDING, FIRE PROTECTION, FURNISHINGS AND MAINTENANCE

Sec.

- 5320.81. Building, physical plant and grounds.
- 5320.82. Fire protection and safety.
- 5320.83. Living/sleeping quarters.
- 5320.84. Furnishings and equipment.
- 5320.85. Housekeeping and maintenance.
- 5320.86. Laundry service.

§ 5320.81. Building, physical plant and grounds.

(a) An LTSR may not house more than 16 residents. One provider who had been licensed/approved to operate an LTSR with bed capacity in excess of 16 prior to January 1, 1993, is exempt from this provision.

(b) An LTSR shall have the capacity to allow locks on entrances and exits to preclude elopement of involuntarily committed individuals and to prevent unauthorized entrance. Physical attributes of the facility that are intended to maintain necessary levels of protection shall be as unobtrusive as possible to maintain a home-like environment.

(c) The LTSR shall have an adequate supply of hot and cold water piped to each wash basin, bathtub/shower, kitchen sink, commercial dishwasher, and to laundry equipment. Hot water accessible to residents may not exceed 130°F at the outlets.

(d) Heating in rooms used by residents shall be maintained at a temperature of not less than 65°F or, when there are residents 65 years of age and older, not less than 70°F.

(e) Portable space heaters are prohibited. Space heaters shall be adequately vented and installed with permanent connections and protectors.

(f) Steam heat radiators and pipes in rooms and areas used by residents and within reach of residents shall be covered.

(g) Fireplaces shall be securely screened when in use.

§ 5320.82. Fire protection and safety.

(a) The program director shall arrange for the local fire department or another outside safety consultant to inspect and approve each LTSR site for fire safety and to determine the number, location and type of fire extinguishers and smoke detectors required. This fire safety inspection shall be done before initial occupancy and repeated at least every 2 years thereafter. Inspections shall be documented.

(b) Emergency telephone numbers for the fire department, local police and on-call direct care staff shall be posted at each telephone in the LTSR.

(c) The staff shall be instructed in the operation of the fire extinguishers.

(d) Residents may be permitted to smoke only in designated areas. Proper safeguards shall be taken against the fire hazards involved in smoking, such as providing ash trays.

(e) Fire drills at each LTSR site shall be documented and held at least every 2 months; night time drills shall be conducted semiannually.

§ 5320.83. Living/sleeping quarters.

(a) No more than two residents may be housed in any room regardless of its size.

(b) A single occupancy room shall have at least 80 square feet of floor space. Bedrooms for two persons shall have at least 60 square feet of floor space per person and have sufficient floor space to accommodate the items required in § 5320.84 (relating to furnishings and equipment). If a bedroom has a built-in closet, up to 9 square feet per closet may be counted in calculating the square footage of floor space. Bedrooms for one or more immobile residents may require additional square footage sufficient to accommodate the special needs of the resident, such as a wheelchair or special furniture or equipment.

(c) Bedroom windows shall have curtains, shades or blinds that cover the entire window when drawn.

(d) Residents shall have direct access to bathrooms, kitchens and other living areas without having to pass through the bedroom of another resident.

(e) Residents who are immobile shall be given bedrooms on the ground floor closest to the exit.

(f) Bunk beds or other raised beds of any type which require a resident to climb steps or ladders to get into or out of bed may not be used.

(g) Resident bedrooms are reserved for use by their occupants; they may not be used as common rooms for group activities.

(h) There shall be one tub or shower for every six or fewer residents. Each LTSR shall have at least one bathtub.

(i) Bathrooms shall be equipped with soap, toilet paper and sanitary towels or a hand blow dryer. Rack space shall be provided in the bathroom for personal towels. The use of common towels is prohibited.

(j) Toilet and bath areas shall have grab bars, hand rails and assist bars as needed. Tubs and showers shall have nonslip surfaces. Multiple toilets, bathtubs or showers in the same room shall be enclosed to provide privacy.

(k) Residents shall have the use of recreation or lounge areas which, in combination, shall be large enough to accommodate all residents at once. Lounge areas shall be equipped with adequate and appropriate seating, lighting sufficient for reading and tables. A working television and radio shall be available in at least one lounge area. The LTSR provider shall provide reading and recreational materials for residents.

§ 5320.84. Furnishings and equipment.

(a) Each resident's bedroom or bed area shall be equipped with the following items, which shall be clean and maintained in good repair:

- (1) A single or double bed with a mattress and firm box spring.
- (2) A bed pillow.
- (3) Bed linens and blankets.
- (4) Towels and wash cloths.
- (5) A chair.
- (6) A bedside table or shelf.
- (7) A bedside lamp.

(8) A towel bar.

(9) A dresser and mirror.

(10) A clothes closet or wardrobe.

(b) In two-bed bedrooms, items listed in subsection (a)(9) and (10) may be shared by two residents.

(c) The resident may furnish some or all of the items listed in subsection (a) and other personal possessions such as radios and televisions as space permits, unless the possession constitutes a hazard or interferes with the rights of other residents. Residents should be encouraged to personalize their bedrooms. LTSR house restrictions on the amount or type of personal furnishings permitted should be stipulated in the resident/provider contract.

(d) Space for storage of personal property, such as trunks, suitcases and seasonal clothing, shall be provided in a dry, protected area.

§ 5320.85. Housekeeping and maintenance.

(a) Furniture shall be arranged to provide for the safety and comfort of the residents and to permit quiet privacy zones and areas that foster social interactions.

(b) Furnishings and housekeeping shall be maintained so that the LTSR is comfortable, "home-like" and clean.

(c) Residents shall be encouraged to keep their bedrooms neat and tidy and to assist with cleanup of program areas after group or individual activities. The LTSR shall provide basic housekeeping, cleaning and maintenance of the physical plant.

(d) The LTSR shall be free of hazards, such as loose or broken window glass, loose or cracked floors and floor coverings, and cracked or loose plaster on walls or ceilings.

(e) Interior and exterior stairways shall have securely fastened handrails and nonskid surfaces. If present, stair coverings shall also be securely fastened.

(f) Exterior doors and windows opened for ventilation shall be screened.

(g) Appropriate vector control measures shall be used to keep the LTSR free from insects, rodents and other pests.

§ 5320.86. Laundry service.

Laundry service for bed linens, towels and personal clothing shall be provided unless otherwise indicated in the resident/provider contract, and shall meet the following requirements:

- (1) The supply of linen shall be sufficient to ensure a complete bed linen change at least once per week.
- (2) Clean linens shall be stored in an area separate from soiled linen and clothing. Soiled articles shall be kept in covered containers.
- (3) The provider shall take measures to ensure that the resident's clothing is not lost or misplaced in the process of laundering.
- (4) A washer and dryer shall be provided for resident use. Residents shall be encouraged and trained in their use to care for personal clothes.

Subchapter J. FOOD SERVICE

Sec.
5320.91. Food service.

§ 5320.91. Food service.

(a) Residents shall be provided with at least three well-balanced, nutritious meals daily. Snacks shall also be available.

(b) When a resident unavoidably misses a scheduled meal, the provider shall ensure that a substitute meal is provided to the resident.

(c) Special diets, dietary restrictions and supplements that are prescribed by the resident's physician shall be accommodated by the LTSR.

(d) Enough flexibility shall be built into mealtimes to accommodate the regular schedules of individual residents.

(e) The week's menu shall be prepared at least 7 days in advance. The current week's menu shall be posted in a resident accessible location.

(f) Meals shall be provided to residents in a dining room or dining area, except that service in the resident's room shall be available when clinically indicated.

(g) The dining area shall be furnished with sufficient tables and chairs to accommodate all residents at one sitting.

(h) Utensils used to prepare and serve food and beverages shall be free from chips and cracks.

(i) Food stored, prepared or served by the LTSR shall be clean and safe for human consumption and meet applicable Federal standards.

(j) Food returned from individual plates may not be reused or reserved.

(k) Refrigerators shall be maintained below 45°F.

Subchapter K. WAIVER OF STANDARDS

Sec.
5320.101. Waiver of standards.

§ 5320.101. Waiver of standards.

It is the policy of the Department that the licensees comply with applicable Departmental regulations to assure quality of care. The Department may, within its discretion and for good reason, grant waivers to specific requirements contained in this chapter. A waiver will be granted only when the health, safety and welfare of the residents and the quality of services provided to residents are not affected. The Department reserves the right to revoke a waiver if the conditions required by the waiver are not met.

[Pa.B. Doc. No. 96-287. Filed for public inspection March 1, 1996, 9:00 a.m.]

Title 58—RECREATION**GAME COMMISSION**

[58 PA. CODE CHS. 141 AND 147]

Turkey Management Areas and Falconry

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), on January 23, 1996, adopted the following amendments to 58 Pa. Code:

Amend Chapter 141, Appendix C (relating to Pennsylvania Turkey Management Areas), to provide for additional fall turkey hunting opportunities by dividing Turkey Management Area #9 into separate management areas and have them identified as Areas #9-A and #9-B. This split could then provide limited fall turkey hunting in a portion of Area #9 that has previously been closed to fall hunting. Area #9-B would then be limited to shotguns only for fall turkey hunting. The Commission additionally approved for final adoption, the split of Turkey Management Area #1 into Turkey Management Area #1-A and #1-B. Turkey Management Area #1-B will be that portion of Area #1 that includes all of Erie and Crawford Counties. The remainder of Turkey Management Area #1 will be designated as Turkey Management Area #1-A.

Amend § 147.113 (relating to falconry) to provide for a more positive reporting procedure to the Commission when raptors are transferred from one permittee to another in both intrastate and interstate transactions, as well as provide for consistent reporting procedures in the event of the death of a raptor.

These amendments are necessary to properly manage the wildlife resources of this Commonwealth and will have no adverse effect on the resources.

The amendment to Chapter 141, Appendix C has made public as a proposal at the June 20, 1995, meeting of the Commission and the amendments to § 147.113 were made public as a proposal at the October 3, 1995, meeting of the Commission. The notice of proposed rule-making was set forth at 25 Pa.B. 5248 (November 25, 1995).

*Amendment to Chapter 141, Appendix C**1. Introduction*

The Commission at its June 20, 1995, meeting proposed changing the boundaries of Turkey Management Area #9 and splitting it into two areas. At its January 23, 1996, meeting, the Commission voted to further change the proposed map to include a split of Turkey Management Area #1 into a Turkey Management Area #1-B which contains Erie and Crawford Counties and Turkey Management Area #1-A which would include the rest of the former Turkey Management Area #1. These changes are being made under 34 Pa.C.S. §§ 322(c) and 2102 (relating to specific powers and duties; and regulations).

2. Purpose and Authority

There is a sufficient population of wild turkeys in some parts of Turkey Management Area #9 to support a limited fall turkey season. As a consequence the Commission has changed the map in Chapter 141, Appendix C to split Turkey Management Area #9 into Areas #9-A and #9-B.

The Commission has also decided that the wild turkey populations in Erie and Crawford Counties are sufficiently abundant to permit an earlier start of the fall turkey season in those counties than in the rest of Turkey Management Area #1. Turkey Management Area #1 is therefore being split into Turkey Management Areas #1-A and #1-B.

Section 322(c)(4) of 34 Pa.C.S. authorizes the Commission to "define geographic limitations or restrictions." Section 2102(a) of 34 Pa.C.S. directs the Commission to promulgate regulations as it deems necessary or appropriate concerning game or wildlife. The amendments fall within these mandates.

3. *Regulatory Requirements*

These changes provide more flexibility in scheduling fall turkey hunting season in parts of Turkey Management Areas #1 and #9. These changes do not impose any additional requirements.

4. *Persons Affected*

Individuals wishing to hunt turkey in the affected management areas would need to recheck seasons. It is anticipated that recreational opportunities will be increased.

5. *Cost and Paperwork Requirements*

There will be no additional cost or paperwork resulting from the changes.

Amendment to § 147.113

1. *Introduction*

The Commission at its October 3, 1995, meeting proposed and at its January 23, 1996, meeting finally adopted amendments to § 147.113, to require permit holders to forward a copy of Form 3-186A to the Commission when a raptor is transferred. This change is adopted under 34 Pa.C.S. § 2901(b) (relating to regulations for permits).

2. *Purpose and Authority*

Section 147.113 currently requires the filing of Form 3-186A with the United States Fish and Wildlife Service (USFWS) upon the transfer or death of a raptor. USFWS normally provides a copy of the form to the Commission but it is often after a considerable delay. At a meeting between representatives of the Commission and the Pennsylvania Falconry and Hawk Trust, it was agreed that requiring a copy of Form 3-186A to be forwarded directly to the Commission would permit the Commission to maintain more current information. The amendment adds this requirement. Section 2901(b) of 34 Pa.C.S. authorizes the Commission to promulgate regulations to control activities performed pursuant to permit.

3. *Regulatory Requirements*

The amendment requires falconers to submit a copy of Form 3-186A directly to Commission within 5 calendar days of the transfer or death of a raptor.

4. *Persons Affected*

Falconers transferring or having a raptor die will be affected by this amendment.

5. *Cost and Paperwork Requirements*

The amendment will result in minimal additional cost to falconers for an extra copy of a form that must already be prepared, and some additional postage.

6. *Comment and Response Summary*

Comments were not received concerning the amendments.

7. *Effective Date*

These amendments are effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information on the amendments, the contact person is James R. Fagan, Director, Bureau of Law Enforcement (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 141 and 147, are amended by amending § 147.113 to read as set forth at 25 Pa.B. 5248 (November 25, 1995) and by amending Chapter 141, Appendix C to read as set forth in Annex A.

(b) The Executive Director of the Commission shall submit this order, 25 Pa.B. 5248 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director of the Commission shall certify this order, 25 Pa.B. 5248 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order amending Chapter 141, Appendix C and § 147.113 shall become effective upon final publication in the *Pennsylvania Bulletin*.

DONALD C. MADL,
Executive Director

Fiscal Note: Fiscal Note 48-91 remains valid for the final adoption of the subject regulations.

RULES AND REGULATIONS

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

APPENDIX C

[Pa.B. Doc. No. 96-288. Filed for public inspection March 1, 1996, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 103, 108, 117 AND 125]

Personal Income Tax; Exempt and Nonexempt Income

The Department of Revenue (Department) by this order amends §§ 103.13, 103.16 and 117.18 (relating to net gains or income from disposition of property; interest; and return of information as to payment in excess of \$10), adds Chapter 108 (relating to distributions) and deletes Chapter 125 (relating to personal income tax pronouncements—statement of policy).

These amendments implement the act of December 3, 1993 (P. L. 473, No. 68) (Act 68) which makes taxable gains derived from dispositions of Federal, State and local obligations issued on or after February 1, 1994, and exempts from taxation exempt-interest dividends of investment companies. It also details the circumstances under which information returns would be required from investment companies, Subchapter S corporations and certain other organizations.

Section 103.13 has been amended by adding a new subsection (i) which details the determination of net gain or income with respect to obligations issued on or after February 1, 1994. A new subsection (j) has been added which details adjustments to basis. Paragraph (1) describes adjustments to the basis of a debt instrument in the hands of the holder for taxable years beginning on or after January 1, 1993. Paragraph (2) describes adjustments to the basis for an obligation issued by the Commonwealth, a public authority, commission, board or other agency created by the Commonwealth, a political subdivision of the Commonwealth or a public authority created by the political subdivision or an obligation exempt from tax under the laws of the United States in the hands of the holder.

Section 103.16(a) has been amended to provide that interest includes any charge for the use or detention of money or for a forbearance from enforcement of a debt that is due, whether or not payable as such or as principal. In addition, for taxable years beginning on or after January 1, 1993, interest shall also include any excess of a publicly offered obligation's stated redemption price at maturity over the first price at which a substantial amount of the obligations included in the issue is sold to the public. A new subsection (f) has been added which details unstated or imputed interest for taxable years beginning on or after January 1, 1993.

The Department has also added a new Chapter 108. The chapter is divided into three sections, each detailing rules relating to distributions for different entities. Section 108.1 relates to distributions by corporations, § 108.2 relates to distributions by business trusts and § 108.3 relates to distributions by investment companies.

Section 117.18 has been amended by adding a subsection (b) which provides that a Pennsylvania information return for recipients of dividends and other taxable or nontaxable distributions on shares of stock or beneficial interests shall be made by certain entities. A new subsection (c) sets forth the various ways in which a Pennsylvania information return can be made. A new subsection (d) provides that, unless an extension is granted by the Department on or before February 29 of each calendar year beginning on or after January 1, 1997, an information return shall be furnished to each recipient of distri-

butions who makes a written request or who is a resident individual, estate or trust or other taxpayer, or an investment company. A new subsection (e) provides that an investment company, corporation, association, business trust or personal holding company may rely on its business records in determining the identity and place of residence of recipients.

On May 6, 1994, the Department published a statement of policy relating to exempt and nonexempt income. This statement of policy was codified at §§ 125.11—125.15. With the adoption of these subject amendments, this statement of policy will no longer be necessary and is therefore being deleted.

Notice and Comments

Notice of proposed rulemaking was published at 24 Pa.B. 3538 (July 23, 1994). This proposal is being adopted with changes as set forth in Annex A.

The Department received four comments from the public during the public comment period. In addition, the Department received comments from the Independent Regulatory Review Commission (IRRC). No comments were received from the House and Senate Finance Committees.

Generally, the comments expressed concerns in the following two areas:

(1) The proposed § 117.18(c) provided that a Pennsylvania information return shall be made on Federal Form 1099-DIV, "U. S. Information Return for Recipients of Dividends and Distributions" containing the statement "FOR PA TAX PURPOSES ONLY" or other form acceptable to the Department. Paragraphs (1)—(3) set forth those items of information that the return shall show. Those who commented on the proposed amendments generally felt that this requirement would impose an undue administrative burden and cost on investment companies and others. The suggestion was made to amend § 117.18(c)(3) to permit those who are required to provide a Pennsylvania information return to provide taxpayers with simple instructions on how to calculate the information required under subsection (c)(3) from year-end reports when appropriate.

One comment raised the concern of whether the Department could require that changes be made to a Federal form in light of the fact that only the Federal government may authorize changes to its forms. In addition, a comment also stated that Federal Form 1099-DIV statements are not issued to investors whose dividend distributions were derived solely from state and local governments and public financing authorities.

(2) Those who commented on the proposal also felt that the proposal should be amended to clarify that Pennsylvania information returns will only be required to be sent to taxpayers utilizing a Pennsylvania mailing address.

In addition, IRRC also suggested that the Department set forth an effective date which would give everyone at least 90 days from the effective date of this rulemaking to develop and distribute the information forms. IRRC also recommended that a compliance deadline be set forth in the regulation.

In response to the comments received as well as a further review of the proposal, the following revisions have been made:

(1) Section 117.18(b) has been amended by adding the phrase "or beneficial interests" and deleting the phrase "one or more" and replacing it with the word "any." These

amendments have been made for the purpose of clarifying who must actually file a Pennsylvania information return.

(2) Paragraph (2) under § 117.18(b) has been amended by deleting the phrase "Federal Internal Revenue Code Subchapter S" and adding the phrase "that has an election in effect pursuant to 26 U.S.C.A. § 1362 (relating to election; revocation; termination)." This statutory citation is the section which provides the authority for corporations to elect Federal Subchapter S treatment.

(3) Section 117.18(c) has been amended by dividing the proposed language, as well as amending it, into paragraph (1) and subparagraphs (i)—(iii) and by adding language at paragraphs (2) and (3).

In response to the comments received, language relating to making the Pennsylvania information return on the Federal Form 1099-DIV has been deleted from § 117.18(c)(1) and replaced with a new Pennsylvania Form 99-DIV entitled "Information Return for Recipients of Dividends and Distributions." A Pennsylvania information return could also be made on a form other than the Pennsylvania Form 99-DIV if the form shows the following:

1. The payer's name, address and Federal identification number.
2. The recipient's name, address and Federal identification number.
3. The amount of dividends, nontaxable distributions and Pennsylvania exempt-interest dividends paid.

Consistent with suggestions set forth in comments received, the new paragraph (2) under § 117.18(c) clarifies that when a regulated investment company furnishes Federal Form 1099-DIV to a recipient in compliance with Federal income tax requirements, a Pennsylvania information return may be made by attaching a separate statement showing the ratio of Pennsylvania exempt-interest dividends paid to total ordinary dividends reported on the Federal form.

Also consistent with suggestions made in comments the Department received, a new paragraph (3) under § 117.18(c) provides that when a regulated investment company is not required to furnish Federal Form 1099-DIV, a Pennsylvania information return may be made by separate statement showing the amount of dividends, nontaxable distributions and Pennsylvania exempt-interest dividends paid.

A new subsection (d) has been added to § 117.18 which provides that, unless an extension is granted by the Department on or before February 28 of each calendar year beginning on or after January 1, 1997, an information return shall be furnished to each recipient of distributions who makes a written request therefor or who is a resident individual, estate or trust or other taxpayer, or an investment company. This new subsection answers questions regarding who must be furnished an information return.

In response to comments received, a new subsection (e) has been added to § 117.18 which provides that an investment company, corporation, association, business trust or personal holding company may rely on its business records in determining the identity and place of residence of recipients.

When appropriate throughout § 117.18, the term "investment" was added to modify the term "company." This addition merely clarifies the Department's proposed language.

Finally, the Department is deleting Chapter 125, §§ 125.11—125.15. Upon adoption, these amendments will supersede the statement of policy; therefore, the statement of policy should be deleted. The statement of policy provided guidance with regard to the Department's interpretation of Act 68 until a regulatory package could be adopted.

Fiscal Impact

The Department has determined that the amendments will have no significant fiscal impact on the Commonwealth.

Paperwork

The amendments will generate additional paperwork for certain organizations. These organizations are ones whose shareholders, because of differences between the Federal Income Tax and the Pennsylvania Personal Income Tax, need additional information to accurately report their personal income. These organizations include Subchapter S corporations that are not PA S corporations, personal holding companies, foreign corporations and some investment companies. The additional paperwork will enable their investors to comply with their own reporting requirements.

In addition, there will be additional paperwork costs for the Commonwealth in providing the Pennsylvania Form 99-DIV "Information Return for Recipients of Dividends and Distributions" to Pennsylvania taxpayers.

Effectiveness/Sunset Date

The amendments will become effective upon final publication in the *Pennsylvania Bulletin*. The regulations will be monitored annually. A sunset date has not been assigned.

Contact Person

The contact person for an explanation of the amendments is Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Authority

The amendments are adopted under section 354 of the Tax Reform Code of 1971 (code) (71 P. S. § 7354). Section 354 of the code specifically authorizes and empowers the Department to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of and the collection of taxes imposed by Article III of the code (71 P. S. §§ 7301—7361).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 13, 1994, the Department submitted a copy of the notice of proposed rulemaking, published at 24 Pa.B. 3538, to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance, for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the Committees on January 9, 1996, and were approved by IRRC on January 18, 1996, in accordance with section 5(c) of the Regulatory Review Act.

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code § 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Department, 61 Pa. Code Chapters 103, 117, 108 and 125, are amended by amending §§ 103.13, 103.16 and 117.18; by adding §§ 108.1—108.3; and by deleting §§ 125.11—125.15 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

ROBERT A. JUDGE, Sr.,
Secretary

(Editor's Note: The deletion of §§ 125.11—125.15 was not included in the proposal at 24 Pa.B. 3538.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 548 (February 3, 1996).)

Fiscal Note: Fiscal Note 15-346 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE V. PERSONAL INCOME TAX

CHAPTER 103. IMPOSITION AND DETERMINATION OF TAX

Subchapter B. DETERMINATION OF TAX

§ 103.13. Net gains or income from disposition of property.

* * * * *

(i) *Determination of net gain or income.* For purpose of determining net gains or income from the disposition of property, gain or loss shall be recognized on the sale, exchange or other disposition of obligations issued by the Commonwealth, a public authority, commission, board or other agency created by the Commonwealth, a political subdivision of the Commonwealth or a public authority created by the political subdivision or exempt from State taxation under the laws of the United States only with respect to obligations issued on or after February 1, 1994. Regardless of the obligation's date of issuance, gain or loss shall be recognized on the sale, exchange or other

disposition of obligations issued by the Commonwealth, a public authority, commission, board or other agency created by the Commonwealth, a political subdivision of the Commonwealth or a public authority created by the political subdivision or exempt from State taxation under the laws of the United States for one or more of the following purposes:

- (1) Computing earnings and profits.
- (2) Adjusting basis.
- (3) Determining an individual's poverty income.
- (j) *Adjustments to basis.*

(1) For taxable years beginning on or after January 1, 1993, the basis of a debt instrument in the hands of the holder shall be adjusted upward by the amount of unstated or imputed interest includible in the income of the holder and shall be adjusted downward, but not below zero, by the amount of any payment under the debt instrument other than a payment of stated interest.

(2) The basis of an obligation issued by the Commonwealth, a public authority, commission, board or other agency created by the Commonwealth, a political subdivision of the Commonwealth or a public authority created by the political subdivision or an obligation exempt from tax under the laws of the United States in the hands of the holder shall be adjusted upward by the amount of unstated or imputed interest that would have been includible in income but for its statutory exemption and shall be adjusted downward, but not below zero, by the amount of any payment under the debt instrument other than a payment of stated interest.

§ 103.16. Interest.

(a) *Generally.* Interest includes any charge for the use or detention of money or for a forbearance from enforcement of a debt that is due, whether or not payable as such or as principal, including, for taxable years beginning on or after January 1, 1993, any excess of a publicly offered obligation's stated redemption price at maturity over the first price at which a substantial amount of the obligations included in the issue is sold to the public. For this purpose, the public does not include bond houses, brokers or other persons or organizations acting in the capacity of underwriters or wholesalers. As a general rule, interest received by or credited to the taxpayer constitutes gross income and is fully taxable. Interest income includes interest on savings or other bank deposits; interest on coupon bonds; interest on an open account, promissory note, mortgage or corporate bond or debenture; the interest portion of a condemnation award, usurious interest (unless by state law it is automatically converted to a payment on the principal); interest on legacies and life insurance proceeds held under an agreement to pay interest thereon; and interest on refunds of taxes.

(b) *Bonds bought when interest defaulted or accrued.* If a taxpayer purchases bonds where interest has accrued but has not been paid, interest which is in arrears but has accrued at the time of purchase is not income and may not be taxable as interest if subsequently paid. The payments are returns of capital which reduce the remaining cost basis. Interest which accrued after the date of purchase is taxable interest income for the year in which received or accrued, depending on the method of accounting used by the taxpayer.

(c) *Bonds sold between interest dates.* If bonds are sold between interest dates, part of the sale price represents interest accrued to the date of the sale and shall be reported as interest income.

(d) *Annuities.* Interest does not include amounts received under an annuity contract.

(e) *Government obligations.* Interest derived from obligations which are not statutorily free from state or local taxation under any other act of the General Assembly or under the laws of the United States is taxable under this section. Interest on obligations issued by or on behalf of the United States Government is not taxable under this section. Interest on obligations issued by the Commonwealth, a public authority, commission, board or other agency created by the Commonwealth, a political subdivision of the Commonwealth, or a public authority created by a political subdivision which is for the performance of essential governmental functions and which is in all respects for the benefit of the people of this Commonwealth, for the increase of their commerce and prosperity and for the improvement of their health and living conditions is not taxable under this subsection. Interest on obligations issued by other states and territories, their political subdivisions and instrumentalities is taxable under this section.

(f) *Unstated or imputed interest.* Unstated or imputed interest for a taxable year beginning on or after January 1, 1993, including interest derived from government obligations, shall be computed in the same manner as it is required to be computed for Federal Income Tax purposes.

CHAPTER 108. DISTRIBUTIONS

Sec.

- 108.1. Distributions by corporations.
108.2. Distributions by business trusts.
108.3. Distributions by investment companies.

§ 108.1. Distributions by corporations.

(a) That portion of a distribution paid or credited out of earnings and profits by a corporation to a taxpayer in his capacity as a stockholder shall be taxed as a dividend. The remaining portion shall be applied against, and reduce, the adjusted basis of the taxpayer's stock and, to the extent that it exceeds the adjusted basis of the stock, shall be taxed as a net gain from the disposition of intangible personal property.

(b) The amount of a distribution shall be the amount of money, and the fair market value of property determined as of the date of the distribution, received, reduced, but not below zero, by the amount of any liability of the corporation assumed by the stockholder in connection with the distribution and the amount of any liability to which the property received by the stockholder is subject immediately before, and immediately after, the distribution.

(c) The portion of a distribution that is paid or credited out of earnings and profits shall be determined in accordance with the following:

(1) Every distribution shall be deemed to be made out of earnings and profits to the extent thereof and from the most recently accumulated earnings and profits.

(2) If the current taxable year's earnings and profits equal or exceed the amount of distributions made on stock during the year, each distribution is wholly a dividend paid out of current earnings and profits.

(3) If the amount of distributions made on stock during the current taxable year exceeds the year's earnings and profits, the following apply:

(i) The year's earnings and profits shall be allocated proportionately to each distribution.

(ii) The remaining portion of each distribution is a dividend only to the extent of accumulated earnings and profits at the time the distribution is made.

(4) Income or gain that is taxable under, as well as income or gain that is exempt from, or not taxable under, this article shall be included in computing earnings and profits.

§ 108.2. Distributions by business trusts.

A distribution paid or credited to a taxpayer in its capacity as an interest holder by a business trust is treated in the same manner as a distribution by a corporation to its stockholders.

§ 108.3. Distributions by investment companies.

(a) *Investment company.* For purposes of this section, the term "investment company" includes the following:

(1) A regulated investment company, as defined in 26 U.S.C.A. § 851 (relating to the definition of regulated investment company).

(2) An incorporated or unincorporated enterprise registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21).

(3) An investment company which has no or only limited powers under its governing instruments to vary its investments.

(b) *Dividends and other distributions.* Except as provided in subsection (c), distributions paid or credited to their shareholders with respect to their shares by investment companies are taxed in the same manner as distributions by corporations to their stockholders.

(c) *Pennsylvania exempt-interest dividends.* If, for any taxable year beginning on or after January 1, 1993, the total amount of the distributions that, but for this subsection, would otherwise constitute taxable dividends exceeds the accumulated income account of the investment company, the excess shall constitute excludible Pennsylvania exempt-interest dividends and shall be allocated proportionately to each distribution.

(d) *Accumulated income account.* Each investment company shall establish and maintain an accumulated income account and shall cumulatively adjust the account at the close of each taxable year beginning on or after January 1, 1993, as follows:

(1) By increasing the account for the sum of the following:

(i) The amount of the investment company's current earnings and profits determined without taking into account the following:

(A) The investment company's capital gain net income, as defined in 26 U.S.C.A. § 1222(9) (relating to other terms relating to capital gains and losses), if any.

(B) Items of interest derived by the investment company from an obligation that is statutorily free from taxation by the Commonwealth.

(C) Items of Pennsylvania exempt-interest dividend paid or credited to the investment company as a shareholder by another investment company.

(D) A distributive share of an item described in clause (B) or (C).

(E) That proportion of an amount otherwise allowable as a deduction in computing the earnings and profits which the total of the items described in clauses (B)—(D)

bears to the sum of the total and other gross income of the investment company—exclusive of its capital gain net income.

(ii) The amount of the investment company's capital gain net income.

(iii) The aggregate amount, if any, of Pennsylvania exempt-interest dividend distributions paid or credited to shareholders for the immediately preceding taxable year.

(2) By reducing, but not below zero, the account for the aggregate amount, if any, of distributions paid or credited out of earnings and profits for the immediately preceding taxable year.

(e) *Special rule.*

(1) For purposes of subsection (d), the amount of an investment company's accumulated income account as of the beginning of its 1993 taxable year, the aggregate amount of Pennsylvania exempt-interest dividend distributions paid or credited to shareholders for the 1992 taxable year, and the aggregate amount of distributions paid or credited out of earnings and profits for the 1992 taxable year shall be deemed to be zero, if, at the close of its 1992 taxable year, one of the following applies:

(i) The investment company was unincorporated and had no power under its governing instruments to vary its investments except to eliminate unsafe investments and investments not consistent with the preservation of the capital or tax status of the investments of the fund, honor redemption orders, meet anticipated redemption requirements, negate gains from discount purchases, maintain a constant net asset value per unit under, and in compliance with, an order or rule of the United States Securities and Exchange Commission, or defray normal administrative expenses.

(ii) The investment company was a partnership.

(iii) The investment company had no undistributed earnings and profits.

(2) Otherwise, the amount of an investment company's accumulated income account as of the beginning of its 1993 taxable year shall be the amount that would have been standing to the account at the close of the investment company's 1992 taxable year had the investment company always maintained such an account in accordance with this section.

CHAPTER 117. RETURN AND PAYMENT OF TAX

§ 117.18. Return of information as to payment in excess of \$10.

(a) A person making a distribution, to a taxpayer, out of a pension or profit sharing plan, other than by reason of death, disability or retirement, shall make an annual information return, to the Department of Revenue, Bureau of Personal Income Tax, with respect to the distribution, to the extent that the distribution exceeds that portion contributed to the plan by the taxpayer.

(1) Information returns shall be filed on or before February 28 of each year for distributions made to a taxpayer in the preceding calendar year.

(2) Separate information returns shall be prepared for each taxpayer receiving a distribution, and the return shall substantially conform to Internal Revenue Service Form 1099R.

(i) The returns shall show the following:

(A) The name, address and identification number of the person making the distribution.

(B) The name, address and Social Security number of the taxpayer receiving the distribution.

(C) The amount or value of the distribution made and the amounts contributed by the employer and by the employee, respectively.

(ii) A copy of the return shall be supplied to the employee.

(3) With prior approval of the Director of the Pennsylvania Personal Income Tax Bureau, a person required to make information returns may be permitted to submit a magnetic tape or computer printed listing in lieu of copies of Form 1099R.

(b) On or before February 28 of each year, a Pennsylvania information return for recipients of dividends and other taxable or nontaxable distributions on shares of stock or beneficial interests shall be made by any of the following:

(1) An investment company making a distribution exceeding \$10 to a taxpayer or other investment company if the investment company making payment received interest exempt from tax under the laws of the Commonwealth but is not a regulated investment company, as defined at 26 U.S.C.A. § 851 (relating to definition of regulated investment company).

(2) A corporation that has an election in effect under 26 U.S.C.A. § 1362 (relating to election; revocation; termination) making a distribution exceeding \$10 to a taxpayer if the corporation is not required to make an information return on REV Form 20-S, "Pennsylvania S Corporation Information Return."

(3) An investment company making a distribution exceeding \$10 to a taxpayer or other investment company if the investment company making payment received interest exempt from State taxation under the laws of the United States.

(4) A regulated investment company, as defined in paragraph (1), making a distribution exceeding \$10 to a taxpayer or other investment company if the regulated investment company making payment received interest on State or local bonds that is taxable under this article.

(5) A corporation, association, business trust or investment company making a distribution exceeding \$10 to a taxpayer if it is not required to make an information return on Federal Form 1099-DIV.

(6) A personal holding company or foreign corporation, each as defined at 26 U.S.C.A. § 7701 (relating to definitions), making a distribution exceeding \$10 to a taxpayer.

(c) *Pennsylvania information return.* The Pennsylvania information return shall be made in one of the following ways:

(1) The Pennsylvania information return may be made on a Pennsylvania Form 99-DIV "Information Return for Recipients of Dividends and Distributions" or other form acceptable to the Department and shall show the following:

(i) The payer's name, address and Federal identification number.

(ii) The recipient's name, address and Federal identification number.

(iii) The amount of dividends, nontaxable distributions, and, in the case of investment companies, Pennsylvania exempt-interest dividends paid.

(2) If a regulated investment company furnishes Federal Form 1099-DIV to a recipient in compliance with Federal Income Tax requirements, the Pennsylvania information return may be made by attaching a separate statement showing the ratio of Pennsylvania exempt-interest dividends paid to total ordinary dividends reported on the Federal form.

(3) If a regulated investment company is not required to furnish Federal Form 1099-DIV, the Pennsylvania information return may be made by separate statement showing the amount of dividends, nontaxable distributions and Pennsylvania exempt-interest dividends paid.

(d) Unless an extension is granted by the Department, on or before February 28 of each calendar year beginning on or after January 1, 1997, an information return shall be furnished to each recipient of distributions who makes a written request therefor or who is one of the following:

(1) A resident individual, estate or trust or other taxpayer.

(2) An investment company.

(e) An investment company, corporation, association, business trust or personal holding company may rely on its business records in determining the identity and place of residence of recipients.

CHAPTER 125. (RESERVED)

§ 125.11. (Reserved).

§ 125.12. (Reserved).

§ 125.13. (Reserved).

§ 125.14. (Reserved).

§ 125.15. (Reserved).

[Pa.B. Doc. No. 96-289. Filed for public inspection March 1, 1996, 9:00 a.m.]