

STATEMENTS OF POLICY

Title 43—MILITARY AFFAIRS

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

[43 PA. CODE CH. 11]

Military Family Relief Assistance Program

Under 51 Pa.C.S. § 7319(c) (relating to military family relief assistance), the Department of Military and Veterans Affairs (Department) in consultation with the House and Senate Appropriations Committees and Veterans' Affairs and Emergency Preparedness Committees (Committees) has updated its guidelines for the administration of the Military Family Relief Assistance Program (program).

The guidelines published with this statement of policy set forth operative definitions as well as clear application, adjudication, administration and appeal procedures for the program.

The program is designed to aid military families that have a direct and immediate financial need as a result of the military service of the service member. This program is funded entirely by voluntary donations in the form of Pennsylvania Personal Income Tax Refund checkoffs and direct personal, corporate and organizational donations.

Section 7319(c)(4) of 51 Pa.C.S. provides that these guidelines shall be published in the *Pennsylvania Bulletin* but shall not be subject to review under the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1102 and 1201—1208), referred to as the Commonwealth Documents Law, the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506) or the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

The original guidelines for this program were published at 36 Pa.B. 2232 (May 6, 2006). They were subsequently revised at 40 Pa.B. 2825 (May 29, 2010) to incorporate changes to the program under the act of March 16, 2010 (P.L. 140, No. 9). The act of October 29, 2020 (P.L. 1053, No. 104) most recently amended the program to remove the sunset provision but made no other substantive changes. The revised guidelines set forth in Annex A are issued as part of a routine regulatory review of State veterans' programs administered by the Department and are intended to bring the guidelines into conformity with proposed amendments to other state veterans' programs currently in the rulemaking process.

There are only two substantive changes in these guidelines. First, since military mobilizations have substantially decreased and there is capacity in the program fund, the Department increased the maximum program grant amount from \$3,500 to \$5,000. In addition, the Department increased the program specialist's "Level 1" approval authority from \$1,500 to \$2,000. This small increase creates parity with the Veterans' Temporary Assistance (VTA) Program, promoting use of proper funding sources when a service member or veteran shows eligibility for both programs. With respect to overlapping eligibility, the Department also clarified that program assistance may not be granted concurrently with VTA to address a need arising out of the same event. Beyond these changes, the guidelines have been reorganized to provide consistency with the regulatory format of other State veterans' programs codified in 43 Pa. Code Chapter 5 (relating to Bureau for Veterans' Affairs).

The guidelines set forth in Annex A were sent to the chairpersons and minority chairpersons of the Committees on October 11, 2023. Members of the Committees and their staff reviewed the draft guidelines and provided comment. Under 51 Pa.C.S. § 7319(c), the Committees are not required to take formal action when consulted on these guidelines, and the Committees did not take action.

The guidelines published at 40 Pa.B. 2825 shall be rescinded, and the guidelines set forth in Annex A shall be effective upon publication of this statement of policy in the *Pennsylvania Bulletin*.

Questions about the program and these guidelines may be addressed to the Department's Bureau of Veterans Programs, Initiatives, Reintegration and Outreach at (866) 292-7201 or ra-pa-mfrap@pa.gov.

MARK J. SCHINDLER,
Major General, PAARNG
The Adjutant General

Annex A

TITLE 43. MILITARY AFFAIRS

PART I. DEPARTMENT OF MILITARY AFFAIRS

CHAPTER 11. GUIDELINES FOR THE MILITARY FAMILY RELIEF ASSISTANCE PROGRAM—STATEMENT OF POLICY

(Editor's Note: Under 51 Pa.C.S. § 7319(c) (relating to military family relief assistance), the Department of Military and Veterans Affairs adopted guidelines for the administration of the Military Family Relief Assistance Program. The guidelines set forth in this Chapter as 43 Pa. Code Part I, Chapter 11 (relating to Guidelines for the Military Family Relief Assistance Program—statement of policy), are published under 45 Pa.C.S. § 702(7) (relating to contents of *Pennsylvania Code*) as a document general and permanent in nature which shall be codified in the *Pennsylvania Code*.)

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§ 11.1. Authority.

These guidelines are promulgated under the authority of 51 Pa.C.S. § 7319(c) (relating to military family relief assistance) to implement the program as set forth in 51 Pa.C.S. § 7319 of the Military and Veterans Code, as added by the act of March 16, 2010 (P.L. 140, No. 9), effective May 15, 2010, as amended by the act of June 18, 2014 (P.L. 766, No. 66), effective August 18, 2014, and further amended by the act of October 29, 2020 (P.L. 1053, No. 104), effective October 29, 2020.

§ 11.2. Purpose.

The Commonwealth's program provides emergency assistance to eligible service members and eligible relatives of eligible service members. The program is established to provide emergency assistance grants to families of persons who are residents of this Commonwealth and members of the Armed Forces of the United States.

§ 11.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise or unless the governing statute, as amended, amends the meaning.

Armed Forces of the United States—As defined at 10 U.S.C. § 101(a)(4).

Bureau—The Bureau of Veterans Programs, Initiatives, Reintegration and Outreach of the department.

Department—The Department of Military and Veterans Affairs of the Commonwealth.

Eligible relative of an eligible service member—As conforms to 51 Pa.C.S. § 7319(j) (relating to military family relief assistance), means the dependent spouse or dependent child of the eligible service member or, in the case of applicants for financial assistance to visit a hospitalized service member, the service member's spouse, parent, sibling or child. An eligible relative must be a resident, domiciliary, of this Commonwealth at the time of application for assistance. An otherwise eligible relative may retain eligibility if absent from the Commonwealth accompanying the eligible service member to military duty in another state or country.

Eligible service member—As conforms to 51 Pa.C.S. § 7319(j), means any of the following:

(i) A member of the Armed Forces of the United States or its reserve components, including the Pennsylvania National Guard, who is serving on active duty authorized under 10 U.S.C. or 32 U.S.C., other than active duty for training, for a period of 30 or more consecutive days.

(ii) A member of the Pennsylvania National Guard serving on State active duty, authorized under 51 Pa.C.S. § 508 (relating to active duty for emergency), for a period of 30 or more consecutive days.

(iii) A member in good standing of any reserve component of the Armed Forces of the United States, including the Pennsylvania National Guard, for a period of 3 years after release from a tour of active duty, authorized under 10 U.S.C. or 32 U.S.C., other than active duty for training, of 30 or more consecutive days duration when the need for assistance is directly related to the circumstances under § 11.8 (relating to effective date).

(iv) A member in good standing of the Pennsylvania National Guard for a period of 3 years after release from a tour of State active duty, authorized under 51 Pa.C.S. § 508, of 30 or more consecutive days duration when the need for assistance is directly related to the circumstances under § 11.8.

(v) A former member of the Armed Forces of the United States or its reserve components, including the Pennsylvania National Guard for a period of 4 years after discharge if:

(A) The member was discharged for medical reasons arising out of the member's military service.

(B) The medical disability that resulted in the member's discharge was incurred in the line of duty and was not the result of misconduct.

(C) The medical condition giving rise to the discharge did not exist prior to the member entering military service.

(D) The medical disability was incurred while the member was serving on active duty, other than active duty for training, or State active duty, for a period of 30 or more consecutive days.

(E) The former member received an honorable or under honorable conditions discharge for medical reasons.

(F) The need for assistance is directly related to the former member's military service, to exigent circumstances beyond the eligible member's control, or to a disability incurred in the line of duty.

Exigent circumstances—As conforms to 51 Pa.C.S. § 7319(j), means emergency or extraordinary situations or conditions resulting in an eligible service member being unable to provide the necessities of living for the member or the member's dependents due to factors beyond the member's control. The term includes, but is not limited to, natural or manmade disasters, loss of home, loss of employment, disability, or serious illness or injury.

Program—The Commonwealth's Military Family Relief Assistance Program (MFRAP).

Qualifying period of military service—Active duty, other than active duty for training, of a duration of 30 or more consecutive days or State active duty authorized under 51 Pa.C.S. § 508 for a duration of 30 or more consecutive days.

Resident of Pennsylvania—As conforms to 51 Pa.C.S. § 7319(j), means:

(i) An individual who is domiciled in this Commonwealth. The individual must either physically reside in this Commonwealth or be absent from this Commonwealth under military orders. An individual's spouse or dependent who is domiciled in this Commonwealth who is stationed in another state or country shall qualify under the program as a resident of this Commonwealth so long as the person does not become domiciled in another state.

(ii) An individual who qualifies under the definition of "Resident Individual" in section 301(P) of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971.

VSO—Veterans services officers.

§ 11.4. Application procedures.

(a) *Forms*. Application shall be made on the PA MFRAP Form 01. Application forms are available from the following sources:

(1) The Department of Military and Veterans Affairs, Attention: PIRO-MFRAP, Building 9-26, Fort Indiantown Gap, Pennsylvania 17003-5002, or from the department's program web site at www.dmvpa.gov/Veterans/Benefits/Pages/MilitaryFamilyReliefAssistanceProgram.aspx.

(2) Pennsylvania National Guard Family Assistance Centers across this Commonwealth. Applicants, regardless of branch of service, are encouraged to request assistance from the nearest Pennsylvania National Guard family readiness specialist to complete and submit the application form. To locate the nearest family readiness specialist, see www.pa.ng.mil/Offices-Programs/Service-Member-Family-Support/State-Family-Programs/Family-Assistance/.

(3) Accredited VSOs at the county offices of veterans affairs in each county seat.

(4) The department's field offices collocated with the United States Department of Veterans Affairs Regional Offices in Philadelphia and Pittsburgh.

(5) Accredited VSOs affiliated with The American Legion, Veterans of Foreign Wars (VFW), American Veterans (AMVETS), and Disabled American Veterans (DAV) in this Commonwealth.

(6) Accredited VSOs at the Pennsylvania Veterans Homes in Erie, Hollidaysburg, Philadelphia, Pittsburgh, Scranton and Spring City.

(b) *Completion and execution of the form.* An applicant shall complete and sign the application form, certifying to the truthfulness of its contents under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). If the applicant is unable to sign the application, a person exercising general power of attorney may sign for the applicant. An eligible service member's commanding officer or senior noncommissioned officer/senior enlisted leader must verify the information provided and recommend approval or disapproval.

(c) *Supporting documentation.* An applicant shall submit the following documents with the application form:

(1) Copy of current Pennsylvania driver's license, learner's permit, or identification card, or other acceptable proof of residency as requested.

(2) Copy of the eligible service member's DD Form 214, Certificate of Release or Discharge from Active Duty, or equivalent, or copy of current military identification card as appropriate.

(3) Proof of dependency if applicable.

(4) Copy of the service member's most current Leave and Earnings Statement (LES).

(5) Documentation supporting the exigent circumstances and need for assistance, such as repair estimates, rental agreements, utility bills, bank statements, employment records, and the like.

(d) *Submission of application.*

(1) An applicant shall mail or otherwise deliver the completed application form, together with supporting documentation, to the Department of Military and Veterans Affairs, Attn: PIRO-MFRAP, Bldg. 9-26, Fort Indian-town Gap, Annville, PA 17003-5002.

(2) To expedite the application process, applications and supporting documents may be faxed to (717) 861-9084. Questions and requests for support may be e-mailed to ra-pa-mfrap@pa.gov. Applicants should refrain from sending completed applications or other sensitive and personally identifiable information by e-mail.

(e) *Withdrawal of application.* An applicant may voluntarily withdraw an application for any reason at any time prior to the determination of eligibility by informing the assisting family readiness specialist, VSO or the bureau of a desire to withdraw.

(f) *Other assistance.*

(1) To qualify for assistance under this program, applicants are encouraged to seek assistance from other appropriate sources prior to applying for the program. Other suggested sources of financial assistance include, but are not limited to any of the following:

(i) Army Emergency Relief, www.armyemergencyrelief.org.

(ii) Air Force Aid Society, www.afas.org (Air Force and Space Force).

(iii) Navy-Marine Corps Relief Society, www.nmcrs.org.

(iv) Coast Guard Mutual Assistance, www.cgmahq.org.

(v) Pennsylvania National Guard Associations, www.pngas.org/mission/g2g.

(vi) Enlisted Association of the National Guard of the United States, www.eangus.org/operation-vetcare.

(vii) Non Commissioned Officers Association, www.ncoausa.org/disasterrelief.html.

(viii) Military Officers Association of America, <https://charities.moaa.org/the-moaa-foundation/crf/>.

(ix) American Red Cross, www.redcross.org/get-help/military-families/financial-assistance.

(x) Veterans of Foreign Wars, <https://www.vfw.org/assistance/financial-grants>.

(2) Veterans and their surviving dependents may also be eligible for Veterans' Temporary Assistance (VTA) in accordance with criteria at 51 Pa.C.S. § 8503 (relating to eligibility). However, as explained further in § 11.6(a) (relating to administration procedures), program assistance may not be granted concurrently with VTA to address a need arising out of the same event.

(3) The application for program assistance should include copies of applications or determinations, or both, for other forms of assistance filed by the applicant.

(4) The approval authorities described in § 11.6(b) may waive any requirement to seek assistance from other sources when unusual or exigent circumstances make the application impractical or unlikely to produce results in a timely manner or when the applicant shows that the circumstances are such that other potential sources of assistance are unavailable.

§ 11.5. Adjudication procedures.

(a) Applications for grants will be evaluated according to the eligibility requirements set forth at 51 Pa.C.S. § 7319 (relating to military family relief assistance) and evaluation criteria provided in this chapter, subject to the availability of funds and the exercise of the approval authority's discretion in evaluating the relative priority of requests if funds are not sufficient to satisfy all eligible requests.

(b) As required by 51 Pa.C.S. § 7319, applicants must demonstrate that they have a direct and immediate financial need for assistance as a result of circumstances beyond the control of and not as a result of misconduct by the service member.

(c) Grants may be awarded for purposes such as: food, rent, utilities, emergency transportation and vehicle repair, medical/dental expenses, short-term personal needs when pay is delayed or stolen, emergency home repairs necessary to maintain habitability of essential areas, as well as other emergency needs at the discretion of the approval authority.

(d) Grants may also be awarded if it is demonstrated that financial need is caused by one or more of the following:

(1) A sudden or unexpected loss of income, real or personal property, assets or support directly related to the military service of, or exigent circumstances affecting the service member.

(2) The need for travel, lodging and subsistence for which the applicant lacks financial resources as a result of:

(i) The death or critical illness of an eligible service member's parent or parent-in-law, spouse, sibling or sibling-in-law, or child.

(ii) The wounding of a service member in the line of duty sustained as a result of combat or attack resulting in an immediate need for funds for travel, lodging, subsistence or other activities directly related to the casualty. No more than two eligible relatives of an eligible service member may receive assistance for travel under the term "eligible relative of an eligible service member" as defined in § 11.3 (relating to definitions).

(e) A natural or manmade disaster or other exigent circumstances resulting in the deprivation of food, shelter, or other necessities of life.

(f) Emergency need for childcare for dependent children.

(g) It is recognized that neither 51 Pa.C.S. § 7319 nor this chapter can describe every possible scenario that might result in eligible service members or their relatives having an immediate and direct financial need as a result of circumstances beyond the control of and not as a result of misconduct by the service member. Applicants may qualify for grants when they demonstrate the existence of financial need related to military service coupled with exigent circumstances where the failure to obtain assistance will substantially deter the service member from meeting his or her military obligations. The following situations are examples:

(1) Failure to receive pay and allowances in a timely manner because of errors in military pay systems where circumstances exist precluding casual payment or advance payment.

(2) Loss of income as a result of permanent change of station or extended temporary duty causing member and family to move.

(3) Loss of employment of spouse due to member's service, extended temporary duty or deployment.

(4) Unusual health care costs incurred by the eligible service member or dependents which are not covered by TRICARE insurance or other government sources.

(5) The eligible service member or dependents are victims of crimes that result in loss of income, property or credit (for example, identity theft and the like).

(6) The special needs of an eligible service member or dependents result in a need for assistance that cannot be met as a result of the eligible service member's military service.

(7) The death of a relative of an eligible service member resulting in increased costs or sudden, unexpected loss of income or support.

(h) Examples of situations where assistance would be inappropriate include grants for any of the following:

(1) Pay for nonessential items or finance vacations.

(2) Pay fines or legal expenses in criminal matters.

(3) Assist with home purchase down payment or financing or home improvements (unless directly related to disability incurred during a qualifying period of military service).

(4) Pay bills incurred in purchase of nonessential items.

(i) The criteria that will be considered in determining whether to approve applications for assistance include, but are not limited to any of the following:

(1) Nature of assistance requested.

(2) Degree of financial hardship.

(3) Current family income.

(4) Current debts and obligations.

(5) Number of dependents.

(6) Connection between financial hardship and service member's active-duty status.

(7) The cause of the financial hardship and its relationship, if any, to the negligence or fault of the applicant in managing income and assets.

(8) Change in income (based on military active duty or military medical separation).

(9) Changes in employment and income status of dependents related to service member's active-duty status.

(10) Increased expenses due to service member's active duty.

(11) Military pay problems.

(12) Other issues of financial hardship related to service member's active duty.

(13) Bankruptcy filed or pending.

(14) Pending disciplinary action (service member only).

(15) Length of military duty.

(16) Other aid available or received, or both.

(17) Amounts and dates of any grants previously awarded to the applicant from this fund.

(j) *Limitations on grant approval.*

(1) Only one grant will be awarded to address a need arising out of the same event to either the eligible service member or the eligible relative of the eligible service member, but not to both.

(2) Where an applicant is eligible for both the program and VTA, the program application shall be pursued due to the higher potential amount of grant assistance. In no case will program assistance be granted concurrently with VTA to address a need arising out of the same event.

(3) In no case will assistance be approved for an applicant who is determined by the bureau to have concealed relevant information or supplied fraudulent information in a current or previous application.

(4) In no case will assistance be granted to an applicant who the bureau determines used a previous grant for unlawful, illegal, or unapproved purposes.

(i) Notification of determination. The bureau shall notify applicants of its determination in writing within 5 business days of the receipt of a fully developed application. An application is fully developed when all the information and supporting documentation needed for adjudication has been submitted or gathered.

(1) If the application is approved, the notification will include a check issued by the Commonwealth in the amount of the need for assistance. Checks shall be mailed to the address provided by the applicant on the application form.

(2) If the application is disapproved, the notification will clearly state the reasons for the disapproval and

inform the applicant of the appeal procedures specified in § 11.7 (relating to appeal procedures).

§ 11.6. Administration procedures.

(a) *Grant.*

(1) The maximum grant under this program is \$5,000 or the lesser amount determined by the Adjutant General based on the amount of money in the program special fund.

(2) No more than \$5,000 may be paid to an eligible service member or the eligible relatives of an eligible service member in any 12-month period. Eligibility derives from the eligibility of the service member. This limit means that the eligible service member and all eligible relatives of the eligible service member may not receive more than \$5,000 in total during any 12-month period.

(b) *Approval authority.* The following shall have authority to act on requests for assistance unless otherwise restricted by the Adjutant General:

(1) *Level 1.* Requests for grants of \$2,000 or less may be acted upon by the bureau's program Coordinator on initial application and VSO or VSO Supervisor on reconsideration.

(2) *Level 2.* Requests for grants beyond Level 1 approval authority, up to the maximum grant amount of \$5,000, must be reviewed by a subcommittee for application review described in paragraph 6(d)(2).

(c) *Fund committee.* The Adjutant General will appoint a program fund committee, which will assist in administering the Commonwealth's program. The fund committee may make recommendations to the Adjutant General for prioritization of payments if available funds are insufficient to address all the financial needs requested and recommend changes to this chapter.

(1) The fund committee shall be composed of:

(i) A chairperson, who shall be an officer serving in the grade of Colonel (O6) in the Pennsylvania Army or Air National Guard.

(ii) A vice chairperson, who shall be a non-commissioned officer serving in the grade of Command Sergeant Major or Chief Master Sergeant (E9) in the Pennsylvania Army or Air National Guard.

(iii) Three additional commissioned officers, all of whom shall be serving in the grade of Major or Lieutenant Commander (O4) or above, and at least one of whom shall be a member of a reserve component other than the Pennsylvania National Guard.

(iv) Two additional noncommissioned officers, all of whom shall be serving in the grade of E7 or above, and one of whom may be a member of reserve component other than the Pennsylvania National Guard.

(v) The Deputy Adjutant General for Veterans Affairs and the Deputy for Administration of the Department of Military and Veterans Affairs, or their designees.

(vi) The department's Office of Chief Counsel will provide legal advice and assistance to the fund committee in a non-voting capacity.

(2) At least three members of the fund committee will constitute a subcommittee for application review. The

membership of the subcommittee will rotate based on availability and to ensure that all fund committee members have an equal opportunity to review applications.

(3) Except for review of applications conducted by the subcommittee described in paragraph 6(b)(2), five members of the fund committee will constitute quorum for the conduct of business.

(4) The term of a member of the fund committee will extend from the date of appointment until December 31 of the following year, provided that members will continue to serve until a successor is appointed as long as the member remains eligible. The Adjutant General may extend or adjust the term of service to assure that all terms do not end simultaneously.

(d) *Reporting Requirements.*

(1) On or before July 31 of every year, the department shall submit a report to the Chairperson and Minority Chairperson of the Appropriations Committee of the Senate, the Chairperson and Minority Chairperson of the Appropriations Committee of the House of Representatives, the Chairperson and Minority Chairperson of the Veterans Affairs and Emergency Preparedness Committee of the Senate and the Chairperson and Minority Chairperson of the Veterans Affairs and Emergency Preparedness Committee of the House of Representatives detailing the program guidelines, the number of applicants, the total amount of money raised and distributed and the type of applicant need.

(2) The report shall also set forth any participation by a governmental or nongovernmental organization utilized in the furtherance of the program.

(e) *Safeguarding information.* Personal information obtained and maintained by the bureau in the administration of the program shall be safeguarded in accordance with the rules at 43 Pa. Code Chapter 1, Subchapter B (relating to safeguarding personal information obtained in the administration of veterans' programs) and current security management policy issued by the department and the Commonwealth.

§ 11.7. Appeal procedures.

(a) *Request for reconsideration.* An applicant may ask the bureau or the fund committee for review, as appropriate, to reconsider its determination within 30 days after the notification of determination by submitting a written request, together with a statement of reasons or additional information, to the bureau. After a determination is made on reconsideration, notification shall be sent to the applicant as specified in § 11.5(i) (relating to notification of determination).

(b) *Form and timeliness of appeal.* An applicant aggrieved by a determination on reconsideration may appeal to the Adjutant General in writing within 30 days after notification of the action on reconsideration. Appeals shall be in writing, shall state the reasons for the appeal and describe the requested relief.

(c) *Appeal review and determination.* In accordance with 51 Pa.C.S. § 7319(b)(4) (relating to military family relief assistance), the Adjutant General will issue the final administrative action of the department on appeals.

§ 11.8. Effective date.

This chapter shall take effect upon publication of notice in the *Pennsylvania Bulletin* and apply to all grant applications submitted on or after the effective date.

[Pa.B. Doc. No. 23-1467. Filed for public inspection October 27, 2023, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

Interpretation Relating to Sources of Continuing Education Hours—Statement of Policy

The State Board of Optometry (Board) adds § 23.301 (relating to interpretation relating to sources of continuing education hours—statement of policy) to read as set forth in Annex A. This statement of policy is intended to provide guidance to the regulated community regarding the meaning of the term “individual study” in § 23.86(g) (relating to sources of continuing education hours).

Effective Date

This statement of policy will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The amendments are authorized under the Optometric Practice and Licensure Act (act) (63 P.S. §§ 244.1—244.12). Under the authority of section 3(b)(12) of the act (63 P.S. § 244.3(b)(12)), the Board established regulations in §§ 23.81—23.89 (relating to continuing education) regarding acceptable continuing education. Section 102 of the Commonwealth Documents Law (45 P.S. § 1102) defines “statement of policy” as “any document, except an adjudication or a regulation, promulgated by an agency which sets forth substantive or procedural personal or property rights, privileges, immunities, duties, liabilities or obligations of the public or any part thereof, and includes, without limiting the generality of the foregoing, any document interpreting or implementing any act of Assembly enforced or administered by such agency.” Statements of policy that are general and permanent in nature are required to be codified in the *Pennsylvania Code* under 1 Pa. Code § 3.1 (relating to contents of Code).

As a requirement for optometry license renewal, under § 23.82 (relating to continuing education hour requirements; continuing education reporting; audit and enforcement), licensees must complete at least 30 hours of Board-approved continuing education in each biennial renewal period. This continuing education must be taken from a Board-approved optometry continuing education provider listed in § 23.86(a). Section 23.86(g) allows for up to 15 hours of the required 30 hours to be in individualized study programs. Taped study programs, online or webinar programs and journal courses are considered individual study programs. At a minimum, 50% of continuing education credits must be obtained from attendance at live, in person courses and programs. The Board has received inquiries regarding whether § 23.86(g) applies to “live virtual” courses and programs that are conducted through synchronous (real-time) audio

and video communications where the instructor and participant can interact in real-time.

Today’s current technology provides the ability to interact between the participant and the presenter and other attendees. When the regulations were originally written, live virtual courses and synchronous audio and video communications did not exist as the technology was not developed or available. When the Board recently amended the continuing education regulations at 51 Pa.B. 2633 (May 15, 2021), it recognized online courses but did not make the distinction between real-time (synchronous) education and online learning that does not include real-time interaction between the instructor and participants. The Board, therefore, clarifies in this statement of policy that live virtual courses and programs with real-time (synchronous) video and audio communication are considered by the Board as live, in person, continuing education.

Description of the Statement of Policy

This statement of policy clarifies that live virtual courses and programs that are conducted through synchronous (real-time) audio and video communications where the instructor and participant can interact in real-time is to be considered as “in person” for continuing education purposes. This means that live virtual courses and programs that are conducted through synchronous (real-time) audio and video are not considered “individual study” in § 23.86(g).

Fiscal Impact and Paperwork Requirements

This statement of policy will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

A sunset date is not being established for this statement of policy. Its need and efficacy will be periodically monitored by the Board.

Effective Date

This statement of policy will be effective upon publication in the *Pennsylvania Bulletin*.

Additional Information

Persons who require additional information about this statement of policy may submit inquiries to the Counsel, State Board of Optometry, P.O. Box 69523, Harrisburg, PA 17106-9523, (717) 783-7200 or RA-STRegulatoryCounsel@pa.gov.

Order

The Board, acting under the authority statutes, orders that:

(a) Chapter 23 of 49 Pa. Code is amended by adding a statement of policy in § 23.301 to read as set forth in Annex A.

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

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

LUANNE CHUBB, OD,
Chairperson

Fiscal Note: 16A-5220. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL
STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL
AFFAIRSCHAPTER 23. STATE BOARD OF OPTOMETRY
INTERPRETATIONS

§ 23.301. Interpretation relating to sources of continuing education hours—statement of policy.

(a) *Purpose.* This statement of policy is intended to clarify to the regulated community the Board's current interpretation of "individual study" contained in § 23.86 (relating to sources of continuing education hours).

(b) *Background.* As a requirement for optometry license renewal, under § 23.82 (relating to continuing education hour requirements; continuing education reporting; audit and enforcement), licensees must complete at least 30 hours of Board approved continuing education in each biennial renewal period. This continuing education must

be taken from a Board-approved optometry continuing education provider listed in § 23.86(a). Section 23.86(g) allows for up to 15 hours of the required 30 hours to be individualized study programs. Taped study programs, online or webinar programs and journal courses are considered individual study programs. At a minimum, 50% of continuing education credits must be obtained from attendance at live, in person courses and programs. The Board has received inquiries regarding whether § 23.86(g) applies to "live virtual" courses and programs that are conducted through synchronous (real-time) audio and video communications where the instructor and participant can interact in real-time.

(c) *Interpretation.* For purposes of § 23.86(g), the Board interprets § 23.86(g) to exclude live virtual courses and programs that are conducted through synchronous (real-time) audio and video communications where the instructor and participant can interact in real-time. Stated differently, the Board considers live virtual courses and programs with real-time (synchronous) video and audio communication as live, in person, continuing education.

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