

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Conservation and Natural Resources

The Executive Board approved a reorganization of the Department of Conservation and Natural Resources effective August 21, 2007.

The organization chart at 37 Pa.B. 4877 (September 8, 2007) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 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.)

[Pa.B. Doc. No. 07-1655. Filed for public inspection September 7, 2007, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Education

The Executive Board approved a reorganization of the Department of Education effective August 21, 2007.

The organization chart at 37 Pa.B. 4878 (September 8, 2007) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 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.)

[Pa.B. Doc. No. 07-1656. Filed for public inspection September 7, 2007, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the State Police

The Executive Board approved a reorganization of the State Police effective August 21, 2007.

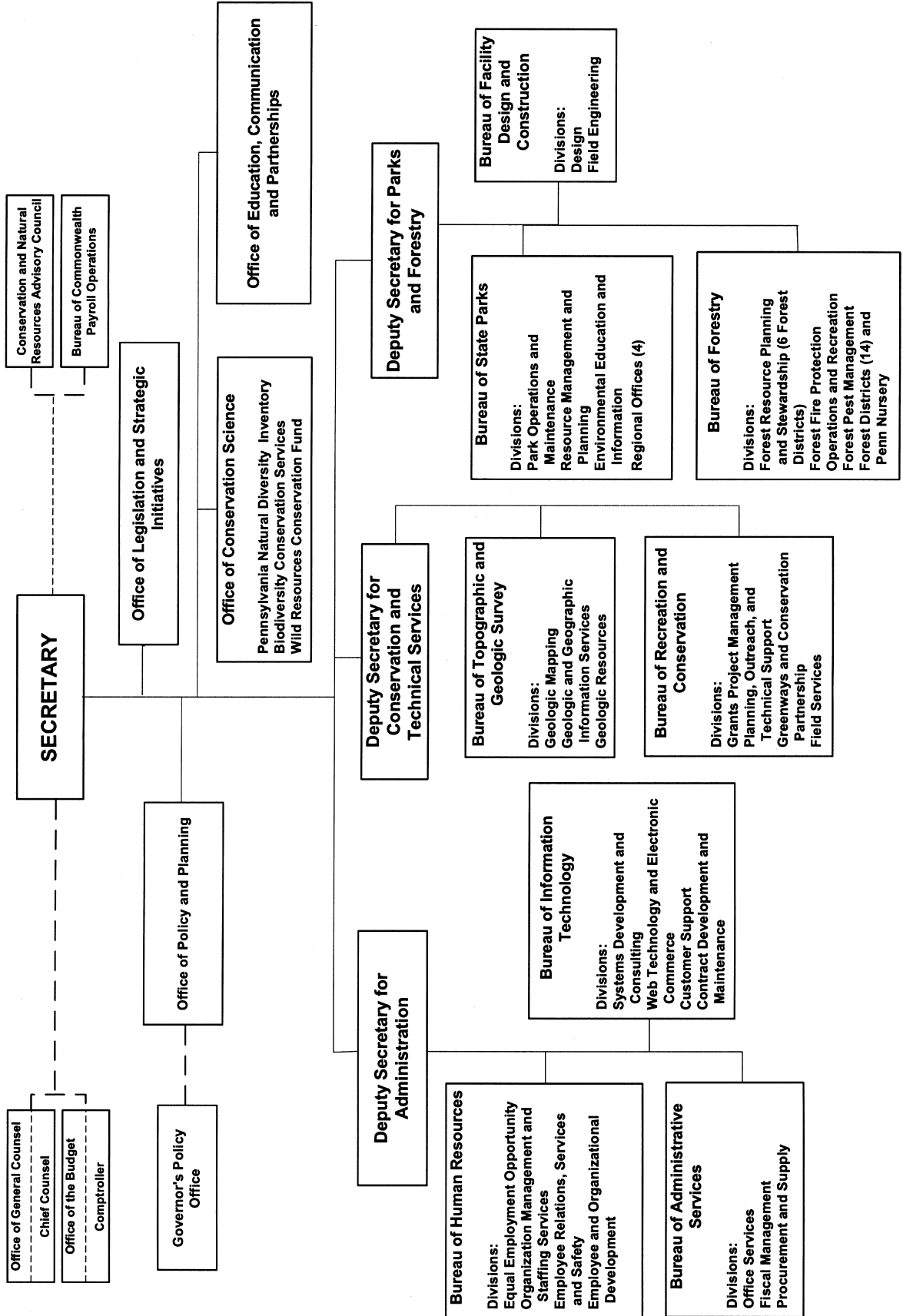
The organization chart at 37 Pa.B. 4879 (September 8, 2007) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 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.)

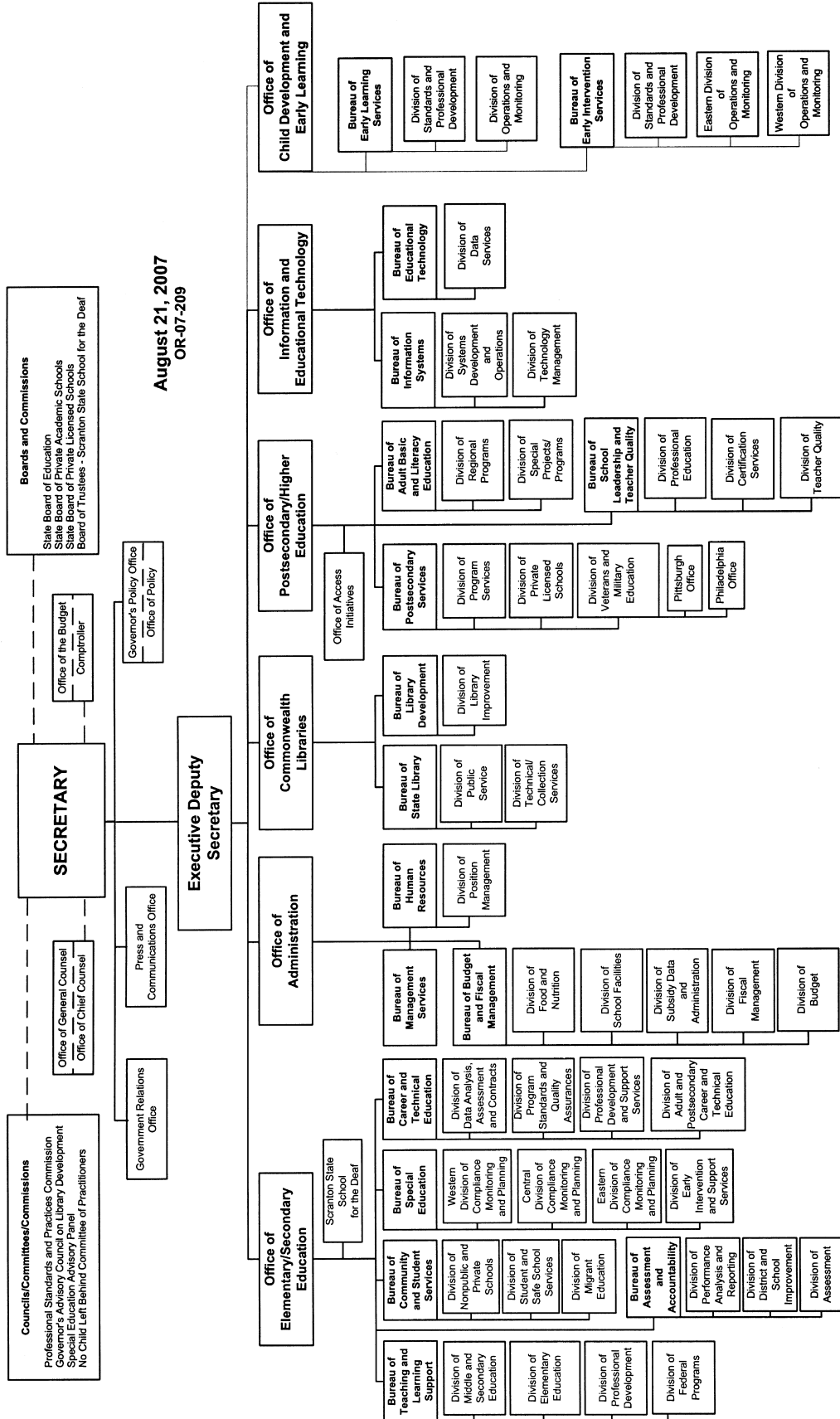
[Pa.B. Doc. No. 07-1657. Filed for public inspection September 7, 2007, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

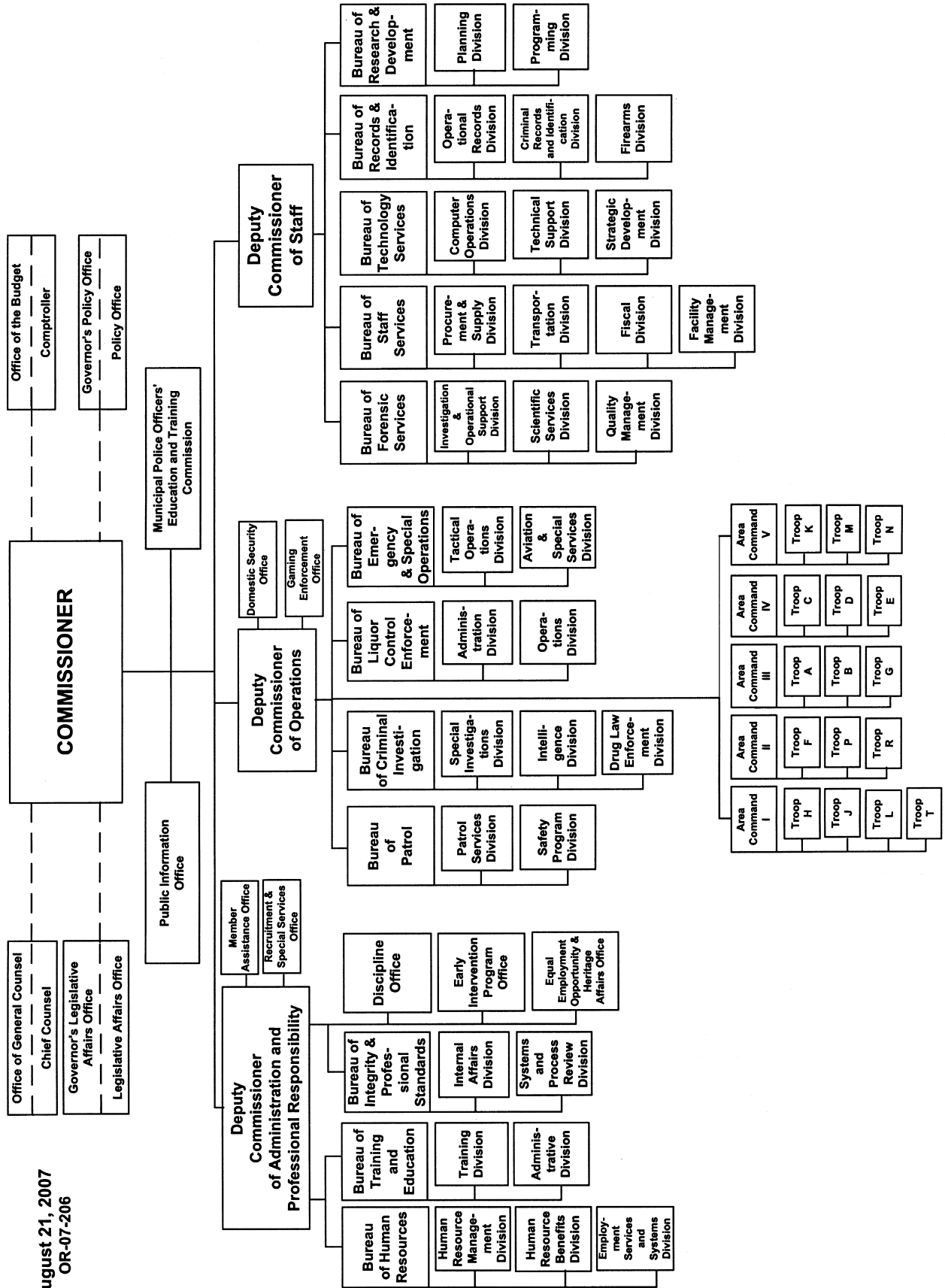
August 21, 2007
OR-07-208



DEPARTMENT OF EDUCATION



PENNSYLVANIA STATE POLICE



August 21, 2007
OR-07-206

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY [34 PA. CODE CH. 231]

Minimum Wage Increase and Training Wage

The Department of Labor and Industry (Department), through its Bureau of Labor Law Compliance (Bureau), amends §§ 231.101—231.103 (relating to minimum wage increase; small business; and training wage) to read as set forth in Annex A. The statement of policy is amended under sections 4(a)(6)—(8) and (e) and 5(c) of The Minimum Wage Act of 1968 (act) (43 P. S. §§ 333.104(a)(6)—(8) and (e) and 333.105(c)), added by the act of July 9, 2006 (P. L. 1077, No. 112) (Act 112).

A. Effective Date

The amendments to this statement of policy will be effective immediately upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

The contact person for this statement of policy is James A. Holzman, Deputy Chief Counsel, Bureau of Labor Law Compliance, 10th Floor, Labor and Industry Building, 7th and Forster Streets, Harrisburg, PA 17120, (717) 787-4186, fax (717) 783-5027, jholzman@state.pa.us.

C. Statutory Authority

On July 9, 2006, amendments to sections 4(a)(6)—(8) and (e) and 5(c) of the act were approved which, among other things, raised the minimum wage, addressed the minimum wage for small business and provided a training wage for workers under 20 years of age. Following these legislative amendments, the Department published a statement of policy at 36 Pa.B. 6547 (October 28, 2006).

This statement of policy is published under the authority of section 9 of the act (43 P. S. § 333.109), which authorizes the Secretary of the Department to enforce the act and to draft and amend regulations that are deemed appropriate to carry out the act's provisions. This statement of policy contains an interpretation of the act, without enumerating further requirements, since passage of amendments to the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C.A. §§ 201—219) raising the Federal minimum wage.

D. Purpose of the Statement of Policy

On May 25, 2007, the Federal Fair Minimum Wage Act of 2007 was signed into law. This act, among other things, amended the Federal minimum wage in section 6(a)(1) of FLSA (29 U.S.C.A. § 206(a)(1)). The Federal minimum wage was raised from \$5.15 to \$5.85 per hour on July 24, 2004, to \$6.55 per hour effective July 24, 2007, and to \$7.25 per hour effective July 24, 2009.

The Commonwealth's minimum wage does not change under section 4(a.1) of the act (43 P. S. § 333.104(a.1)) except when Federal law requires a higher minimum wage as described in this statement of policy. See also section 8 of the FLSA (29 U.S.C.A. § 218) and *Manliguez v. Joseph*, 226 F. Supp. 2d. 377 (E.D. N.Y. 2002).

Section 231.101 contains the required minimum wage for most employers and the effective dates. This section is amended to incorporate the raise in the Federal minimum wage which, at \$7.25 per hour, will be 10¢ higher than the Pennsylvania minimum wage on July 24, 2009.

Accordingly, employers in this Commonwealth must utilize the higher Federal minimum wage on July 24, 2009, according to section 4(a.1) of the act.

Section 231.102 contains the interpretation of section 5(c) of the act pertaining to new minimum wage requirements for employers that have an employee complement of the equivalent of ten or less full-time employees based on a 40-hour workweek. Subsection (a) contains the minimum wage increase schedule for these employers. For clarity, this subsection is amended to reflect the increase of the Pennsylvania minimum wage to \$7.25 per hour on July 24, 2009.

Section 231.103 pertains to section 4(e) of the act when an employer may pay a 60-day training wage to an employee under 20 years of age. This training wage is based upon the Federal minimum wage under section 6(a) of the FLSA. Accordingly, this section was amended to reflect the raises in the Federal minimum wage from \$5.15 to \$5.85 per hour on July 24, 2007, and to \$6.55 per hour on July 24, 2008. The raise of the Federal minimum wage to \$7.25 effectively eliminates this training wage in this Commonwealth on July 24, 2009.

STEPHEN M. SCHMERIN,
Secretary

(Editor's Note: Title 34 of the Pa. Code is amended by amending statements of policy in §§ 231.101—231.103 to read as set forth in Annex A.)

Fiscal Note: 12-81. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART XII. BUREAU OF LABOR STANDARDS

CHAPTER 231. MINIMUM WAGE

MINIMUM WAGE INCREASE AND TRAINING WAGE—STATEMENT OF POLICY

§ 231.101. Minimum wage increase.

(a) Under section 4(a) of the act (43 P. S. § 104(a)), an employer shall pay the following wage rates to all employees for all hours worked subject to exclusions and exemptions contained in the act and this chapter:

- (1) Until December 31, 2006, \$5.15 an hour.
- (2) Beginning January 1, 2007, \$6.25 an hour.
- (3) Beginning July 1, 2007, \$7.15 an hour.
- (4) Beginning July 24, 2009, \$7.25 an hour.

(b) The minimum wage credit for tipped employees is \$2.83 per hour under section 3(d) of the act (43 P. S. § 333.103(d)) with all of the following conditions:

- (1) An employer shall pay the difference when the employee's tips plus the credit for tipped employees does not meet the Pennsylvania minimum wage contained in subsection (a).
- (2) The tip credit applies only if an employee received over \$30 in tips for a month.

§ 231.102. Small business.

(a) Under section 5(c) of the act (43 P. S. § 333.105(c)), an employer who has an employee complement comprised of the equivalent of ten or less full-time employees shall pay the following wage rates to all employees for all hours worked subject to exclusions and exemptions contained in the act and in this chapter:

- (1) Until December 31, 2006, \$5.15 an hour.
- (2) Beginning January 1, 2007, \$5.65 an hour.
- (3) Beginning July 1, 2007, \$6.65 an hour.
- (4) Beginning July 1, 2008, \$7.15 an hour.
- (5) Beginning July 24, 2009, \$7.25 an hour.

(b) The equivalent of ten or less full-time employees is calculated on a 40-hour workweek. A workweek is a period of 7 consecutive days starting on any day selected by the employer.

(c) If the total number of hours worked by all employees in a workweek exceeds 400 hours, the employer may not utilize the minimum wage contained in subsection (a). All of the following also applies:

(1) An employer may be ineligible for the minimum wage contained in subsection (a) if the total hours worked is less than 400 hours per workweek if the employer classifies employees as full-time and the employees work less than 40 hours per week according to the employer's customary and regular practices.

(2) An employer's customary and regular practice is the employer's normal practice over time for scheduling and payment of employees.

(d) An owner is not considered an employee under this section. An employee includes all of the following:

- (1) A manager.
- (2) A supervisor.
- (3) An officer.
- (4) An individual employed by the employer.

(e) An employer is any individual, partnership, association, corporation, business trust or any person or groups of persons acting, directly or indirectly, in the interest of an employer in relation to any employee.

§ 231.103. Training wage.

(a) Under section 4(e) of the act (43 P. S. § 333.104(e)), an employer may pay a 60-day training wage to an employee under 20 years of age based upon the minimum wage required under section 6(a) of the Fair Labor Standards Act (29 U.S.C.A. § 206(a)).

(1) The training wage under section 4(e) of the act is as follows:

- (i) Until July 23, 2007, \$5.15 an hour.
- (ii) Beginning July 24, 2007, \$5.85 an hour.
- (iii) Beginning July 24, 2008, \$6.55 an hour.

(2) The training wage may not be utilized after July 23, 2009. An employer shall pay the minimum wage of \$7.25 to all employees subject to exclusions contained in the act commencing on July 24, 2009.

(b) An employer may pay an employee the training wage up to the day before the employee's 20th birthday. On and after an employee's 20th birthday, the employer shall increase the employee's pay to the minimum wage required under § 231.101 (relating to minimum wage increase) even if the 60-day period has not expired.

(c) The 60-day period is calculated as follows:

- (1) The 60-day period starts on the first day of work.
- (2) The 60-day period is counted as consecutive calendar days and not as days worked or business days.

(3) A break in employment does not affect the calculation of the 60-day period of eligibility and does not allow the employer to restart the 60-day period.

(4) An employee under 20 years old may be paid the training wage for up to 60 consecutive calendar days after initial employment with any employer and not just the first employer who hired the employee.

(5) An employee eligible for the training wage may be employed at the same time by more than one employer if the employers are separate and distinct.

(6) An employee may be initially employed only once by any one employer even if there are breaks in employment.

(d) An employer shall notify an employee at the time of hire of the training wage under this section and the right to receive the Pennsylvania minimum wage contained in § 231.101 after 60 calendar days or at the employee's 20th birthday if the employer utilizes this training wage.

(e) An employer may not take any action to displace or partially displace an existing employee to allow hiring of persons eligible for the training wage under this section. This includes any of the following:

- (1) Reducing an employee's hours.
- (2) Reducing an employee's wages or employment benefits.

(f) An employer may not do any of the following:

(1) Utilize the exclusions and exemptions contained in the act and this chapter if the employer is paying an employee the training wage under this section.

(2) Utilize the wage payment exclusions and exemptions of the act and this chapter for an employee when the 60-day training period has concluded or when the employee is ineligible for the training wage under this section. The employer shall pay the employee the minimum wage required under § 231.101 when the 60-day training period concludes or when the employee is ineligible for the training wage.

(g) An employer is not required to provide training to an employee paid the training wage under this section.

[Pa.B. Doc. No. 07-1658. Filed for public inspection September 7, 2007, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 259]

Implementation of United States Supreme Court Decision in *Arkansas Department of Health & Human Service v. Ahlborn*

Scope

This statement of policy applies to claims by the Department of Public Welfare (Department) for reimbursement of Medical Assistance (MA) from moneys owed by third parties on tort claims brought by MA recipients.

Purpose

The purpose of this statement of policy is to state how the Department will interpret and apply section 1409 of the Public Welfare Code (code) (62 P. S. § 1409) in seeking reimbursement of MA from tort recoveries, in light of the decision of the United States Supreme Court

in *Arkansas Department of Health & Human Services v. Ahlborn*, 547 U.S. 268, 126 S.Ct. 1752 (2006) (*Ahlborn*).
Background

The Commonwealth participates in the Federal Medicaid program established under Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396—1396v). The Commonwealth's Medicaid program is called Medical Assistance (MA). Section 1902(a)(25) of the Social Security Act (42 U.S.C.A. § 1396a(a)(25)) requires the Department to operate a program to recover the costs of MA expenditures from liable third parties. Section 1409 of the code implements these provisions by giving the Department the option of suing tortfeasors separately or asserting a claim against moneys owed by third parties in tort claims brought by MA recipients. Section 1912 of the Social Security Act (42 U.S.C.A. § 1396k) requires MA recipients to assign to the state the right to payment for medical care from any third party. Section 1404(b) of the code (62 P.S. § 1404(b)) implements the assignment under State law.

Prior to the Supreme Court's decision in *Ahlborn*, Federal Medicaid policy allowed states to recover from the entire amount of a tort recovery. However, in *Ahlborn*, the Supreme Court held that states could only assert claims on that portion of a tort recovery that represents the assigned right to payment for medical care from third parties. States are now prohibited from asserting Medicaid claims against that portion of a tort recovery that represents other types of damages such as lost wages, pain and suffering, and other nonmedical damages.

Discussion

In this statement of policy, the Department explains how it will interpret and apply the requirements of section 1409(b) of the code consistent with the *Ahlborn* decision. Since existing Commonwealth law is facially consistent with *Ahlborn*, this statement of policy does not announce significant changes in Department policy or recovery procedures. The main purposes of this statement of policy are to: (1) announce the Department's interpretation of section 1409 of the code consistent with *Ahlborn*; and (2) establish procedures to determine the amount of the Department's recovery in unique factual situations when application of section 1409 of the code may be inconsistent with *Ahlborn*.

Section 259.2(a) (relating to claims against moneys for which third parties are liable as a result of a tort claim allocation of tort proceeds—statement of policy) states the general rule established by *Ahlborn*. The Department will recover from only that portion of a tort recovery that represents payment of medical expenses by a third party. The Department will not recover from a portion of a tort recovery that represents payment for lost wages, pain and suffering, or other nonmedical damages.

Section 259.2(b) explains how the Department will determine the portion of a tort recovery that represents payment of medical expenses. In § 259.2(b)(1), the Department interprets section 1409(b) of the code to provide that the MA beneficiary generally recovers the Department's expenses as part of his tort claim unless the Department chooses to intervene in an action or sue separately. This has been the practice in handling MA reimbursement claims for more than 20 years and reflects the clear intention of the Legislature expressed in section 1409(b)(7) of the code that gives the Department a reimbursement claim in actions prosecuted by the beneficiary alone.

The Department explicitly states in § 259.2(b)(1) that minor beneficiaries must recover MA expenses as part of

their cause of action. Although the general rule in this Commonwealth is that the parent sues for a child's medical expenses, *In re Mikasinovich*, 110 Pa. Super 252 168 A. 506 (1933), the provisions of section 1409(b) of the code do not distinguish between minor and adult beneficiaries and a minor's estate may be liable to repay MA under certain circumstances. *Shearer v. Moore*, 255 Pa. Super 246, 386 A.2d 600 (1978). The rule announced in *Mikasinovich* and similar cases predates modern health insurance and the Department does not see sound policy reason to interpret section 1409 of the code as extending that rule to the recovery of MA owed with respect to minors. Accordingly, the Department interprets section 1409(b) of the code as providing that minors and adults, as beneficiaries of MA, recover MA expenses in the same way in tort actions. If the minor beneficiary has a viable cause of action, the recovery of MA expenses is not barred by the statute of limitations applicable to the parent's cause of action.

In § 259.2(b)(2), the Department interprets section 1409(b)(11) of the code to establish a statutory default rule of allocation for tort recoveries consistent with *Ahlborn*. Section 1409(b)(11) of the code limits the Department's reimbursement to 1/2 of a beneficiary's recovery after deducting attorney's fees, litigation costs and medical expenses regarding the injury paid by the beneficiary. The Department interprets section 1409(b)(11) of the code to mean that the Legislature has by law set aside a portion of a tort recovery for reimbursement of MA and a portion for other damages and expenses. *Ahlborn* does not affect state laws governing the allocation of tort proceeds.

In § 259.2(b)(3), the Department recognizes that there may be specific factual situations when application of section 1409 of the code might violate *Ahlborn*. Accordingly, the Department establishes a procedure for notifying the Department that the beneficiary intends to make an assertion and seek a court order limiting the availability of tort proceeds to reimburse the MA program. However, it should be noted that Commonwealth law provides that a complete settlement of a tort claim conclusively establishes the settlement as full compensation for damages and a plaintiff will not be heard to complain that he settled for less than the full value of his claim. *Goldberg v. Workmen's Compensation Appeal Board*, 620 A.2d 550 (Pa.Cmwlth. 1993); *Allstate Insurance Company v. Clarke*, 527 A.2d 1021 (Pa. Super. 1987); *Price v. Pennsylvania Property and Casualty Insurance Company*, 795 A.2d 407 (Pa. Super. 2002). Accord: *Strickler v. Desai*, 813 A.2d 650 (Pa. 2002) (Opinion announcing judgment of the court). Accordingly, motions or petitions seeking an allocation of tort proceeds after a complete settlement will be opposed by the Department. Likewise, a verdict by the court or jury after trial is normally presumed to constitute a judicial determination of all damages that have been proved. See *Paves v. Corson*, 801 A.2d 546 (Pa. 2002) (The law presumes a jury follows the court's instructions in awarding damages.).

If a prejudicial court order is entered without fair notice to the Department, the Department may contend that the order is not binding upon it or that the order should be vacated. In addition, § 259.2(b)(4) provides that the Department may consider the failure to give fair notice a violation of section 1408(a)(1) of the code (62 P.S. § 1408(a)(1)), making the person responsible for giving the notice liable for a civil money penalty or other sanctions.

Section 1409(b)(11) of the code states that the "entire amount of any settlement" is subject to the Department's

claim for reimbursement. Section 259.2(b)(5) interprets section 1409(b)(11) of the code to mean that private parties cannot allocate a settlement to put part of it beyond the reach of the Department. Section 1409(b)(11) of the code also allows the Department to recover from moneys owed to the Department that were incorrectly paid to the beneficiary or others. This provision does not authorize the Department to assert a claim against nonmedical portions of a tort recovery.

Section 259.2(b)(6) states a beneficiary may not release the Department's claim without the Department's express consent. If a tort defendant wishes to be certain that it will not be sued by the Department, it should insist that an express release of claims be obtained from the Department. Beneficiaries should be aware that section 1912(a) of the Social Security Act requires that they cooperate with the Department in pursuing liable third parties. If a beneficiary does not obtain a release of the Department's claims, but instead indemnifies the liable third parties from those claims, the beneficiary's eligibility for MA may be jeopardized.

The Department is entitled to fair notice before action is taken to limit the portion of tort proceeds available to the Department. The Department specifies what it considers fair notice in § 259.2(c). If a beneficiary seeks to exclude MA expenses from its claim, the Department must be notified at the time of filing of the lawsuit so it can intervene in the case or sue separately. If a beneficiary seeks an allocation of the tort proceeds by the court or a trier of fact, the Department must be given reason-

able advance notice so it can participate in the allocation. If the parties seek to settle a case, and the beneficiary wishes to obtain a court order allocating the proceeds so that the Department receives less than 1/2 of the net proceeds of any settlement, the beneficiary must provide the Department with reasonable advance notice of the settlement so the Department can take action to protect its interest before the settlement becomes binding. Finally, if a party files a motion to eliminate the medical expenses paid by MA from the case, the moving party must give the Department reasonable advance notice and an opportunity to intervene in the case. Thirty days advance notice will be deemed reasonable.

Effective Date

This statement of policy takes effect upon publication in the *Pennsylvania Bulletin* and applies to unresolved and open claims.

Contact

Comments and questions regarding this statement of policy should be directed to the Division of Third Party Liability, Department of Public Welfare, P. O. Box 8486, Harrisburg, PA 17105-8486, (717) 772-6604.

(Editor's Note: Title 55 of the *Pennsylvania Code* is amended by adding a statement of policy in § 259.2 to read as set forth in Annex A.)

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-BUL-074. (1) General Fund;

	<i>MA—Inpatient</i>	<i>MA—Outpatient</i>	<i>MA—Long-Term Care</i>	<i>Cash Grants</i>
(2) Implementing Year 2007-08 is	\$1,654,000	\$1,094,000	\$332,000	\$405,000
(3) 1st Succeeding Year 2008-09 is	\$1,985,000	\$1,317,000	\$400,000	\$486,000
2nd Succeeding Year 2009-10 is	\$1,985,000	\$1,317,000	\$400,000	\$486,000
3rd Succeeding Year 2010-11 is	\$1,985,000	\$1,317,000	\$400,000	\$486,000
4th Succeeding Year 2011-12 is	\$1,985,000	\$1,317,000	\$400,000	\$486,000
5th Succeeding Year 2012-13 is	\$1,985,000	\$1,317,000	\$400,000	\$486,000
(4) 2006-07 Program—	\$513,020,000	\$671,472,000	\$753,146,000	\$478,338,000
2005-06 Program—	\$478,693,000	\$945,950,000	\$817,890,000	\$434,931,000
2004-05 Program—	\$531,785,000	\$842,991,000	\$476,116,000	\$384,182,000
(7) MA—Inpatient, MA—Outpatient, MA—Long-Term Care, Cash Grants; (8) recommends adoption. Funds have been included in the Department's budget to cover this increase.				

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart G. RESTITUTION AND REIMBURSEMENT

CHAPTER 259. THIRD-PARTY LIABILITY

§ 259.2. Claims against moneys for which third parties are liable as a result of a tort claim allocation of tort proceeds—statement of policy.

(a) With respect to claims asserted by the MA Program against moneys owed by third parties as a result of tort

claims asserted by a beneficiary of MA benefits, the Department will only recover from that portion of a tort recovery which represents payment for medical care by the third party. The term "beneficiary" includes both present and former recipients of MA benefits, and includes individuals receiving benefits through an MA managed care organization.

(b) In determining the portion of a tort recovery that represents payment for medical care by a third party, the Department will apply the following interpretations:

(1) Unless the Department intervenes in a lawsuit or sues separately, beneficiaries, including beneficiaries who

are minors, are vested with the right to recover injury related medical expenses paid by the MA Program as part of their cause of action for other damages, and absent an express court order to the contrary are deemed to recover medical expenses as part of any tort recovery.

(2) In the absence of a court order allocating tort proceeds among categories of damages, 1/2 of the net proceeds are allocated by law to be available to repay injury-related MA expenses. The amount of the net proceeds is computed by deducting from the gross proceeds the attorney's fees, litigation costs and medical expenses relating to the injury that were paid for by the beneficiary prior to the settlement of the injured beneficiary's action or claim.

(3) If the beneficiary or other party seeks to obtain a court order limiting the portion of the tort recovery from which MA reimbursement may be paid to an amount less than 1/2 of the net proceeds, or excluding amounts paid by the MA program from the recovery, the Department shall be given fair notice and an opportunity to protect its interest.

(4) Failure to provide the Department with fair notice and an opportunity to protect its interest, prior to obtaining a court order limiting the portion of a tort recovery from which MA reimbursement may be paid, constitutes a violation of section 1408(a)(1) of the Public Welfare Code (62 P. S. § 1408(a)(1)).

(5) The Department is not bound by a private agreement between the parties to a tort claim regarding allocation of the proceeds.

(6) The Department's claims against third parties for reimbursement of MA cannot be released by a beneficiary without the Department's express consent in writing.

(c) The following procedures provide the Department with fair notice and an opportunity to protect its interest prior to entry of an order subject to subsection (b)(3):

(1) In a case when the beneficiary seeks to exclude injury-related medical expenses paid by the MA Program from the recovery, the beneficiary shall comply with the notice of suit requirements in section 1409(b)(5) of the Public Welfare Code (62 P. S. § 1409(b)(5)) and include a statement that the beneficiary will seek to exclude monies paid by the MA Program from any recovery.

(2) In a case when the beneficiary seeks an allocation of tort proceeds by the court or a trier of fact, the beneficiary shall provide the Department with reasonable advance notice and an opportunity to intervene in the case prior to the determination.

(3) In a case when the beneficiary seeks a court order limiting the portion of the tort settlement from which MA reimbursement may be paid to an amount less than 1/2 of the net proceeds of any settlement, the beneficiary shall provide the Department with reasonable advance notice of the settlement before it becomes binding.

(4) In a case when a motion is to eliminate medical expenses paid by MA from the case, the moving party shall provide the Department with reasonable advance notice and an opportunity to intervene in the case prior to adjudication of the motion.

(5) Thirty days advance notice is considered reasonable advance notice under this subsection.

(6) Notices must be in writing and sent by certified or registered mail to the Division of Third Party Liability, Department of Public Welfare, P. O. Box 8486, Harrisburg, PA 17105 and include the following information:

- (i) The name of the beneficiary.
- (ii) The beneficiary's MA identification number, if known.
- (iii) The beneficiary's date of birth.
- (iv) The name of the beneficiary's attorney, if applicable.
- (v) The insurance carriers, if applicable.
- (vi) The date and specific injuries giving rise to the claim.
- (vii) The court and docket number in which the claim is pending, if applicable.

[Pa.B. Doc. No. 07-1659. Filed for public inspection September 7, 2007, 9:00 a.m.]