

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE CH. 5]

Child Abuse Reporting Requirements

The State Board of Chiropractic (Board) amends §§ 5.1, 5.12, 5.13, 5.17, 5.20 and 5.91—5.96, and adds §§ 5.97 and 5.98 (relating to child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 302(3) of the Chiropractic Practice Act (63 P.S. § 625.302(3)) sets forth the Board's general rulemaking authority. Under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) (CPSL), specifically, section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees of the Board.

Background and Need for this Final-Form Rulemaking

Since 2014, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on all health-related Boards to require training in child abuse recognition and reporting for licensees who are considered "mandated reporters" under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license, or applying for renewal of a license, on or after January 1, 2015, and were implemented as of that date. This final-form rulemaking is required to update the Board's regulations on the subject of child abuse reporting to comport to the numerous amendments made to the CPSL, and to incorporate the mandatory training requirements required by Act 31.

Summary and Response to Comments

Notice of the proposed rulemaking was published at 52 Pa.B. 6861 (November 5, 2022). Publication was followed by a 30-day public comment period during which the Board received no public comments. Additionally, there were no comments received from the Independent Regulatory Review Commission (IRRC) other than to say that they have no objections, comments or recommendations to offer. IRRC further advised that if the final-form rulemaking is delivered without revisions, and the committees do not take any action, it will be deemed approved. The House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. For these reasons, the Board made no changes to this final-form rulemaking.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to this final-form rulemaking. Because licensees are already required

to complete mandatory continuing education, and the 2 hours in child abuse recognition and reporting are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure would incur an additional requirement, and as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved training providers of the mandatory training in child abuse recognition and reporting are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandated reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 30, 2023, the Board submitted a copy of this rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the SCP/PLC and the HPLC. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has made no revisions based on a lack of comments received from the public, IRRC, the HPLC and the SCP/PLC.

Under section 5.1(g)(3) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(g)(3) and (j.2)), on September 20, 2023, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective September 20, 2023.

Additional Information

Additional information may be obtained by writing to Shakeena Chappelle, Board Administrator, State Board of Chiropractic, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-CHIROPRACTIC@pa.gov.

Findings

The State Board of Chiropractic finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and no comments were received.

(3) Amendments were not made to this final-form rulemaking and therefore the final-form rulemaking does not enlarge the original purpose of the proposed rulemaking published at 52 Pa.B. 6861.

(4) This final-form rulemaking is necessary and appropriate for the administration of the relevant provisions of the CPSL (23 Pa.C.S. §§ 6301—6388).

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 5, are amended by amending §§ 5.1, 5.12, 5.13, 5.17, 5.20 and 5.91—5.96, and adding §§ 5.97 and 5.98 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify this final-form rulemaking and shall deposit it with the Legislative Reference Bureau as required by law.

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

WILLIAM AUKERMAN, DC,
Chairperson

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

Fiscal Note: Fiscal Note 16A-4322 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 5. STATE BOARD OF CHIROPRACTIC

Subchapter A. GENERAL PROVISIONS

§ 5.1. Definitions.

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

Act—The Chiropractic Practice Act (63 P.S. §§ 525.101—625.1106).

Approved chiropractic college—A chiropractic college approved in accordance with section 303 of the act (63 P.S. § 625.303).

Board—The State Board of Chiropractic of the Commonwealth.

Bodily injury—Impairment of physical condition or substantial pain.

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

Child—An individual under 18 years of age.

Child abuse—Intentionally, knowingly or recklessly doing any of the following:

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of these acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child’s parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services, which operates a 24-hour a day Statewide toll-free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Chiropractic specialty—A specialized area of chiropractic in which a licensee has achieved certification or diplomate status through a program approved by an approved chiropractic college that has established valid standards acceptable to the Board for the achievement of certification or diplomate status.

Licensee—An individual holding an unrestricted license to practice chiropractic granted by the Board in accordance with the act and this chapter.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all licensed chiropractors.

NBCE—The National Board of Chiropractic Examiners.

National Board of Examination—An examination developed, prepared, administered and graded by the NBCE.

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

Perpetrator—A person who has committed child abuse as defined in this section. The following apply:

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) An individual 14 years of age or older who is a person responsible for the child's welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related, within the third degree of consanguinity or affinity by birth or adoption, to the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person responsible for the child's welfare who is 18 years of age or older.

(E) A person 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

(i) A youth camp or program.

(ii) A recreational camp or program.

(iii) A sports or athletic program.

(iv) A community or social outreach program.

(v) An enrichment or educational program.

(vi) A troop, club or similar organization.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.

(ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

Subchapter B. LICENSURE, CERTIFICATION, EXAMINATION AND REGISTRATION PROVISIONS

§ 5.12. Licensure by examination.

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(c) The applicant shall provide proof that the applicant has obtained professional liability insurance in accordance with § 5.41 (relating to certification of professional liability insurance). It is sufficient if the applicant files with the application a copy of a letter from the applicant's professional liability insurance carrier indicating that the applicant will be covered against professional liability in the required amounts effective upon the issuance of the applicant's license to practice chiropractic in this Commonwealth. Upon issuance of the license, the licensee has 30 days to submit to the Board the certificate of insurance or a copy of the policy declaration page as described in § 5.41. The effective date of this subsection is September 1, 1988.

(d) The applicant shall submit, or cause to be submitted, evidence of having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 5.97(a) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 5.13. Licensure by reciprocity.

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(d) The applicant shall provide proof that the applicant has obtained professional liability insurance in accordance with § 5.41 (relating to certification of professional liability insurance). It is sufficient if the applicant files with the application a copy of a letter from the applicant's professional liability insurance carrier indicating that the applicant will be covered against professional liability in the required amounts effective upon the issuance of the applicant's license to practice chiropractic in this Commonwealth. Upon issuance of the license, the licensee has 30 days to submit to the Board the certificate of insurance or copy of the policy declaration page as described in § 5.41. The effective date of this subsection is September 1, 1988.

(d.1) The applicant shall submit, or cause to be submitted, evidence that the applicant has completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 5.97(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(e) The Board may deny an application for licensure by reciprocity as provided in section 506(a) of the act (63 P.S. § 625.506(a)).

§ 5.17. Biennial registration; unregistered status and inactive status; failure to renew; address of record.

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(f) An application for biennial registration shall contain the following information in the manner indicated on the application form:

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(3) Proof of attendance at continuing education courses during the previous biennial registration period as required by section 507 of the act (63 P.S. § 625.507) and § 5.14 (relating to certification to use adjunctive procedures), if proof was not filed by the expiration of that biennial registration period.

(4) Verification that the applicant has completed at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 5.97(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(g) A licensee failing to file biennial registration application or pay the required registration fee by the registration date will have the license classified as unregistered. As long as a licensee holds an unregistered license, the licensee is not permitted to practice in this Commonwealth. A licensee who does so when the license was unregistered will be required to pay a penalty fee of \$5 for each month or part of a month since the expiration of the biennial registration and may be subject to disciplinary proceedings before the Board or criminal prosecution, or both.

* * * * *

(j) To renew an inactive or unregistered license, a licensee shall file an application for biennial registration, pay the current and back registration and penalty fees which are due, submit a notarized affidavit setting forth the time in which the licensee did not practice in this Commonwealth, submit a resumé of activities since the license was last registered, submit a letter of good standing from another state where the licensee has been practicing and submit evidence of compliance with continuing education, including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 5.97(b), and professional liability insurance requirements in accordance with the act and this chapter.

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§ 5.20. Volunteer license.

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

* * * * *

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

(3) Verification that the applicant has completed at least 3 hours of mandatory training in child abuse recognition and reporting in accordance with § 5.97(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(d) *Validity of license.* A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period,

the volunteer license holder shall notify the Board of any change in clinic or volunteer status within 30 days of the date of the change, or at the time of renewal, whichever occurs first.

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

(1) As a condition of biennial renewal, the applicant shall satisfy the same continuing education requirements as a holder of an active, unrestricted license, including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 5.97(b).

(2) The applicant shall be exempt from § 5.6 (relating to fees) pertaining to the biennial renewal fee and shall be exempt from section 508 of the Chiropractic Practice Act (63 P.S. § 625.508) with regard to the maintenance of liability insurance coverage under section 701 of the Health Care Services Malpractice Act (40 P.S. § 1301-701).

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Subchapter I. CHILD ABUSE REPORTING REQUIREMENTS

§ 5.91. Suspected child abuse—mandated reporting requirements.

(a) *General rule.*

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed chiropractors are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter for the mandated reporter to make a report of suspected child abuse.

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

(b) *Staff members of public or private agencies, institutions and facilities.* Whenever a licensed chiropractor is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that chiropractor shall report immediately in accordance with subsection (c) and shall immediately thereafter

notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.* A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this paragraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* A written or electronic report of suspected child abuse, shall include the following information, if known:

(1) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(2) Where the suspected child abuse occurred.

(3) The age and sex of each subject of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(5) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(6) Family composition.

(7) The source of the report.

(8) The name, telephone number and e-mail address of the person making the report.

(9) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(10) Other information which the Department of Human Services may require by regulation.

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

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

A chiropractor required to report suspected child abuse may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 5.91(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter

as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request. Medical summaries or reports of the photographs, X-rays and relevant medical tests shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6340(a)(9) or (10) (relating to release of information in confidential reports).

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

A chiropractor who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 5.94. Immunity from liability.

(a) Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a chiropractor who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the chiropractor's actions. For the purpose of any civil or criminal proceeding, the good faith of the chiropractor shall be presumed.

(b) The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a chiropractor's actions under §§ 5.91—5.93 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 5.95. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 5.91—5.94 take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse.

§ 5.96. Noncompliance.

(a) *Disciplinary action.* A chiropractor who willfully fails to comply with the reporting requirements in §§ 5.91—5.93 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 506(a)(9) and (13) of the act (63 P.S. §§ 625.506(a)(9) and (13)).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties), a chiropractor who is required to report

a case of suspected child abuse or to make a referral to the appropriate authorities, and who willfully fails to do so, commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report an individual suspected of child abuse continues while the mandated reporter knows or has reasonable cause to suspect that a child is being subjected to child abuse by the same individual or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

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

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license shall complete at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 5.98 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensees seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 5.98. The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course within the applicable biennial renewal period or the licensee has obtained an exemption under subsection (c). If a licensee also holds a license issued by another licensing board

within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or subsection (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required under 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or subsection (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant or licensee should not be subject to the training or continuing education requirement. The Board will not grant an exemption based solely upon proof that children are not a part of the applicant's or licensee's practice. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license, as applicable. If an exemption is denied, the Board will e-mail the applicant or licensee a discrepancy notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption.

§ 5.98. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth

in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions shall include the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) All course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript or recording of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which shall include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the individual, entity or organization in writing upon approval of the course and

will post a list of approved courses on the Bureau's web site and the Board's web site.

[Pa.B. Doc. No. 23-1504. Filed for public inspection November 3, 2023, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

[49 PA. CODE CH. 42]

Child Abuse Reporting Requirements

The State Board of Occupational Therapy Education and Licensure (Board) hereby amends its regulations at 49 Pa. Code §§ 42.13—42.16, 42.41—42.47 and 42.53 and adds §§ 42.48 and 42.49 (relating to child abuse recognition and reporting—mandatory training requirements; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 5(b) of the Occupational Therapy Practice Act (act) (63 P.S. § 1505(b)) sets forth the Board's general rulemaking authority. Under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) (CPSL), specifically, section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees of the Board.

Background and Need for this Final-Form Rulemaking

Since 2014, the General Assembly has made numerous amendments to the CPSL, including the addition of the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on all health-related boards to require training in child abuse recognition and reporting for licensees who are considered "mandated reporters" under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license or applying for renewal of a license, on or after January 1, 2015, and were implemented as of that date. This final-form rulemaking is required to update the Board's regulations on the subject of child abuse reporting to comport to the numerous amendments made to the CPSL and to incorporate the mandatory training requirements required by Act 31.

Specifically, the Board is amending §§ 42.13—42.15 (relating to application for licensure; foreign-educated applicants; and application for temporary license) to incorporate the requirement for all applicants to complete, as a condition of licensure, 3 hours of training in child abuse recognition and reporting as required by Act 31. Similarly, the Board is amending §§ 42.16 and 42.53 (relating to biennial renewal; inactive status; failure to renew; and continued competency requirements) to set forth the requirement that licensees applying for biennial renewal or reactivation complete at least 2 hours of continuing education in child abuse recognition and reporting as a condition of renewal or reactivation.

The Board is making comprehensive amendments to the Board's existing child abuse reporting requirements

at §§ 42.41—42.47 to comport to the numerous amendments made to the CPSL since 2014. In addition, the Board is adding two new sections setting forth the mandatory training requirements in section 6383(b)(3)(i) and (ii) of the CPSL. Section 42.48 (relating to child abuse recognition and reporting—mandatory training requirement) sets forth the requirements that all individuals applying for an initial license are required to complete 3 hours of approved training in child abuse recognition and reporting and that all licensees seeking renewal of a license are required to complete at least 2 hours of continuing education in child abuse recognition and reporting as a requirement of renewal. This section also includes the process for applying for an exemption from the mandatory training requirements as set forth in section 6383(b)(4) and (6) of the CPSL, for individuals who have already completed similar training or who otherwise should be exempt from the training requirements.

Finally, the Board is adding § 42.49 (relating to child abuse recognition and reporting course approval process) to set forth the process developed by the Bureau of Professional and Occupational Affairs (Bureau), in conjunction with the Department of Human Services, for individuals, entities and organizations to apply for approval to deliver training required under Act 31. To be approved to provide Act 31 training in child abuse recognition and reporting, an individual, entity or organization must be able to report participation/attendance electronically to the Bureau so that the completion of the training is automatically imported into the applicant's or licensee's record with the Board at the time the course is completed.

Summary and Response to Comments

Notice of the proposed rulemaking was published at 52 Pa.B. 6560 (October 22, 2022). Publication was followed by a 30-day public comment period during which the Board received no public comments. Additionally, there were no comments received from the Independent Regulatory Review Commission (IRRC) other than to say that they have no objections, comments or recommendations to offer. IRRC further advised that if the final form rulemaking is delivered without revisions, and the committees do not take any action, it will be deemed approved. The House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments.

Description of Amendments to this Final-Form Rulemaking

Upon review of the proposed rulemaking as published, an error was noticed which is now being corrected in this final-form rulemaking. Specifically, § 42.48(d) (relating to child abuse recognition and reporting—mandatory training requirement) provides for exemptions from the mandatory training requirement. The last sentence was incomplete as published. It was intended to clarify that if an exemption is denied, the Board will e-mail the applicant or licensee a notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption. The second alternative was inadvertently omitted from the proposed rulemaking as published and is added to this final-form rulemaking. No other changes were made.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Because licensees are already required to complete mandatory continued competency requirements, and the 2 hours in child abuse recognition and reporting are incorporated in the existing requirement, there would not be an increased burden. Only applicants for licensure would incur an additional requirement and, as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved training providers of the mandatory training in child abuse recognition and reporting are required to report participation/attendance electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandated reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 1, 2023, the Board submitted a copy of this rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the SCP/PLC and the HPLC. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has made no revisions based on a lack of comments received from the public, IRRC, the HPLC and the SCP/PLC.

Under section 5.1(g)(3) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(g)(3) and (j.2)), on September 20, 2023, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 21, 2023, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Paul Keller, Board Administrator, State Board of Occupational Therapy Education and Licensure, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-OCCUPATIONAL@pa.gov.

Findings

The State Board of Occupational Therapy Education and Licensure finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and no comments were received.

(3) Amendments made to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 52 Pa.B. 6560.

(4) This final-form rulemaking is necessary and appropriate for the administration of the relevant provisions of the CPSL (23 Pa.C.S. §§ 6301—6388).

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by amending §§ 42.13—42.16, 42.41—42.47 and 42.53 and adding §§ 42.48 and 42.49 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify this final-form rulemaking and shall deposit it with the Legislative Reference Bureau as required by law.

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

KERRI L. HAMPLE, OTD, OTR/L,
Chairperson

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

Fiscal Note: Fiscal Note 16A-679 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS****PART I. DEPARTMENT OF STATE****Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS****CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE****LICENSURE****§ 42.13. Application for licensure.**

(a) To apply for licensure, an applicant shall pay the required fee and submit or cause to be submitted evidence satisfactory to the Board, on forms provided by the Board, that the applicant meets the following criteria:

* * * * *

(4) Has passed the licensure examination or has qualified for a waiver of the licensure examination under § 42.12 (relating to waiver of licensure examination).

(5) Has completed 3 hours of approved training in child abuse recognition and reporting in accordance with § 42.48 (relating to child abuse recognition and reporting—mandatory training requirement).

(b) In addition to the requirements in subsection (a), an applicant for an occupational therapist license shall submit one of the following:

(1) Proof that the applicant has professional liability insurance as set forth in § 42.61 (relating to professional liability insurance requirement).

* * * * *

§ 42.14. Foreign-educated applicants.

(a) To apply for licensure, the foreign-educated applicant shall, before examination, submit or cause to be

submitted evidence to the Board, on forms provided by the Board, that the applicant meets the following requirements:

- (1) Is of good moral character.
- (2) Has completed educational requirements substantially equal to § 42.13(2) (relating to application for licensure). The Board will accept a credentials evaluation done by the NBCOT as proof that the foreign-educated applicant has completed the educational requirements.
- (3) Has completed 3 hours of approved training in child abuse recognition and reporting in accordance with § 42.48 (relating to child abuse recognition and reporting—mandatory training requirement).
- (b) The foreign-educated applicant may be licensed by the Board if the applicant has complied with subsection (a) and has met one of the following criteria:

- (1) Passed the licensure examination.
- (2) Qualified for a waiver of the licensure examination under § 42.12 (relating to waiver of licensure examination).

* * * * *

§ 42.15. Application for temporary license.

* * * * *

(d) In addition to the requirements in subsection (a) or subsection (c), an applicant for a temporary license as an occupational therapist shall submit one of the following:

- (1) Proof that the applicant has professional liability insurance as set forth in § 42.61 (relating to professional liability insurance requirement).
- (2) A letter from the applicant’s insurance carrier indicating that the applicant will be covered against professional liability in the amount specified in § 42.61(a) upon issuance of the applicant’s temporary license.
- (3) A certification from the applicant indicating that the applicant will be covered by an employer against professional liability in the amount specified in § 42.61(a) effective upon the beginning of employment, provided that the applicant does not practice occupational therapy prior to the beginning of employment.

(e) In addition to the requirements in subsection (a) or subsection (c), an applicant for a temporary license as an occupational therapist shall complete, as a condition of licensure, 3 hours of approved training in child abuse recognition and reporting in accordance with § 42.48 (relating to child abuse recognition and reporting—mandatory training requirement).

§ 42.16. Biennial renewal; inactive status; failure to renew.

* * * * *

(c) To retain the right to engage in practice, the licensee shall renew the licensee’s license biennially as follows:

- (1) An occupational therapist shall complete the biennial renewal application, pay the required fee, certify completion of the continued competence requirement as specified in § 42.53 (relating to continued competency requirements), submit or cause to be submitted documentation verifying the completion of at least 2 hours of approved continuing education in child abuse recognition and reporting in accordance with § 42.48(b) (relating to child abuse recognition and reporting—mandatory training requirement) and certify maintenance of the required professional liability insurance coverage as specified in § 42.61 (relating to professional liability insurance re-

quirement) which must include the insurance company name and policy number, as applicable.

- (2) An occupational therapy assistant shall complete the biennial renewal application, pay the required fee, certify completion of the continued competence requirement as specified in § 42.53 and submit or cause to be submitted documentation verifying the completion of at least 2 hours of approved continuing education in child abuse recognition and reporting in accordance with § 42.48(b).

* * * * *

(g) A licensee who is applying to return to active status is required to pay fees which are due and submit or cause to be submitted all of the following:

- (1) A sworn statement stating the period of time during which the licensee was not engaged in practice in this Commonwealth.
- (2) A resume of professional activities since the most recent licensure.
- (3) A letter of good standing from another state or territory where the licensee is currently licensed or registered to practice, if applicable.

(4) Proof of professional liability insurance coverage as set forth in § 42.61 if applying to reactivate an occupational therapist license.

(5) Verification of completion of at least 2 hours of approved continuing education in child abuse recognition and reporting in accordance with § 42.48(b).

(h) The applicant for licensure renewal will not be assessed a fee or penalty for preceding biennial periods in which the applicant did not engage in practice in this Commonwealth.

* * * * *

CHILD ABUSE REPORTING REQUIREMENTS

§ 42.41. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 42.42—42.49 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Bodily injury—Impairment of physical condition or substantial pain.

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

Child—An individual under 18 years of age.

Child abuse—Intentionally, knowingly or recklessly doing any of the following:

- (i) Causing bodily injury to a child through any recent act or failure to act.
- (ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (iv) Causing sexual abuse or exploitation of a child through any act or failure to act.
- (v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services, which operates a 24-hour a day Statewide toll-free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all licensed occupational therapists and occupational therapy assistants.

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

Perpetrator—A person who has committed child abuse as defined in this section.

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) An individual 14 years of age or older who is a person responsible for the child's welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person responsible for the child's welfare who is 18 years of age or older.

(E) An individual 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

(i) A youth camp or program.

(ii) A recreational camp or program.

(iii) A sports or athletic program.

(iv) A community or social outreach program.

(v) An enrichment or educational program.

(vi) A troop, club or similar organization.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life

or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.

(ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 42.42. Suspected child abuse—mandated reporting requirements.

(a) *General rule.*

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensees of the Board are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the licensee has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter in order for the mandated reporter to make a report of suspected child abuse.

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

(b) *Staff members of public or private agencies, institutions and facilities.* Whenever a licensee is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that licensee shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.* A licensee shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this paragraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (relating to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* The following information shall be included in the written or electronic reports, if known:

(1) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(2) Where the suspected child abuse occurred.

(3) The age and sex of each subject of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or any sibling of the child.

(5) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(6) Family composition.

(7) The source of the report.

(8) The name, telephone number and e-mail address of the person making the report.

(9) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

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

(10) Other information which the Department of Human Services may require by regulation.

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

A licensee may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 42.42(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request. Medical summaries or reports of the photographs, X-rays and relevant medical tests shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6340(a)(9) or (10) (relating to release of information in confidential reports).

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

A licensee who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 42.45. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a licensee who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or

engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the licensee's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensee shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensee's actions under §§ 42.42—42.44 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of a child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 42.46. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 42.42—42.44 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over provisions in § 42.24(1)(iv) (relating to code of ethics) and any other client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient/client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse.

§ 42.47. Noncompliance.

(a) *Disciplinary action.* A licensee who willfully fails to comply with the reporting requirements in §§ 42.42—42.44 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 16 of the act (63 P.S. § 1516).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties), a licensee who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities, and who willfully fails to do so, commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been con-

victed of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

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

(a) Except as provided in subsection (c), individuals applying to the Board for a license shall complete, as a condition of licensure, at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 42.49 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensees seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 42.49. The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course within the applicable biennial renewal period or the licensee has obtained an exemption under subsection (c). If a licensee holds a license issued by another licensing Board within the Bureau that also requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or subsection (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or subsection (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant or licensee should not be subject to the training or continuing education requirement. The Board will not grant an exemption based solely upon proof that children are not a part of the applicant's or licensee's practice. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant the exemption if it finds that the completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license, as applicable. If an exemption is denied, the Board will e-mail the applicant or licensee a notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption.

§ 42.49. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) All course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing a participant's understanding of the material.

(vi) For online courses, a transcript or recording of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which must include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the individual, entity or organization in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

CONTINUED COMPETENCY

42.53. Continued competency requirements.

(a) Beginning with the July 1, 2013—June 30, 2015, biennium, an occupational therapist shall complete a minimum of 24 contact hours in each biennial period in acceptable continued competency activities listed in § 42.55 (relating to acceptable continued competency activities) as a condition of licensure renewal. Beginning with the July 1, 2019—June 30, 2021, biennium, an occupational therapy assistant shall complete a minimum of 24 contact hours in each biennial period in acceptable continued competency activities listed in § 42.55 as a condition of licensure renewal. At least 2 hours of the required 24 hours shall be completed in child abuse recognition and reporting in accordance with § 42.48 (relating to child abuse recognition and reporting—mandatory training requirement).

(b) With the limited exception of the 2 hours of mandated training in child abuse recognition and reporting, a licensee is exempt from complying with subsection (a) for the first biennial renewal period following initial licensure.

(c) A licensee seeking to reactivate a lapsed or inactive license shall show compliance with the continued competency contact hour requirement, including at least 2 hours of training in child abuse recognition and reporting, during the 2-year period immediately preceding application for reactivation.

(d) As a condition of reinstatement, a licensee whose license has been suspended or revoked shall complete the required continued competency contact hours for each licensure biennium in which the license was suspended or

revoked, including at least 2 hours of approved training in child abuse recognition and reporting.

[Pa.B. Doc. No. 23-1505. Filed for public inspection November 3, 2023, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses; Appointment of Agents

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 16, 2023, meeting amended §§ 143.21, 143.23, 143.24, 143.27, 143.28 and 143.30 and deleted §§ 143.22, 143.25 and 143.26 to reduce issuing agent application fees, minimum annual sales quotas and annual bonding rates.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 53 Pa.B. 5001 (August 12, 2023).

1. Purpose and Authority

The Commission recently conducted an evaluation of its issuing agent program looking for ways to decrease costs and requirements applied to this group. This effort is, in part, related to the Commission's recognition of the significant impact that changes to its license sales process have had on issuing agents in the form of reduced license sales opportunities and increased business costs. For these reasons, the Commission amends §§ 143.21, 143.23, 143.24, 143.27, 143.28 and 143.30 and deletes §§ 143.22, 143.25 and 143.26 to reduce issuing agent application fees, minimum annual sales quotas and annual bonding rates.

Former regulations set the annual issuing agent application fee at \$500. First-year issuing agents were eligible to apply for application fee rebates of up to \$400 depending on the number of licenses they sold throughout the license year. However, few first-year issuing agents recouped more than \$100 to \$200 in rebates each year. Moreover, the \$500 application fee figure was set at a time that predated the availability of Internet license sales and onsite license printing for in-person sales that are now current standards. Due to the updates and advances in the licensing system process and infrastructure over the past decade, the Commission determined that it could safely lower costs to issuing agents by reducing the annual issuing agent application fee from \$500 to \$200 without creating any unreasonable risk to the Commission. Furthermore, this change mitigated the need for the Commission to maintain the existing rebate program, thus allowing the applicable regulations to be simplified by elimination of regulatory text.

Former regulations also required an issuing agent applicant to acquire and maintain an \$18,000 bond. This bonding rate was set at a time when pre-printed paper licenses were sent to issuing agents to cover the Commission's significant investment in the value of the paper license stock, as well as the resulting fees collected by issuing agents. After the Commission's migration to the

current onsite printable licenses, its investment in license paper stock has significantly reduced. Furthermore, the Commission's migration to weekly electronic funds transfers has also reduced the Commission's financial risk associated with collection of the revenues generated by license and permit sales. Lastly, of the few instances in the past 2 years where the Commission collected against an agent's bond, the claims fell well below the \$18,000 figure. Due to all the updates and advances in the licensing system process and infrastructure over the past decade, the Commission determined that it could safely lower costs to issuing agents by reducing the annual bonding rate from \$18,000 to \$11,000 without creating any unreasonable risk to the Commission.

As an added measure to reduce requirements on issuing agents, the Commission determined it appropriate to reduce the annual minimum sales requirement from 50 to 25 license products per year. The changes will also allow mentored hunting permits to be included in an issuing agent's sales figures. Lastly, the Commission determined that it is no longer necessary to maintain the limited November 1 through March 31 application window for issuing agent applications due to the advances in technology and license issuance processes. Allowing applications year-round will give issuing agent applicants greater access without creating any unreasonable burdens on the Commission. It is worth noting that the Commission amended its original proposal to delete § 143.28, by replacing the deletion with the addition of new text specifically authorizing year-round submission of issuing agent applications. This amendment should provide greater clarity on the authorized period of application.

Section 2722(g)(2) of the code (relating to authorized license-issuing agents) provides that the Commission shall adopt regulations for "[t]he administration, control and performance of activities conducted pursuant to the provisions of this chapter." The amendments to §§ 143.21, 143.23, 143.24, 143.27, 143.28 and 143.30 and deletion of §§ 143.22, 143.25 and 143.26 are adopted under this authority.

2. *Regulatory Requirements*

This final-form rulemaking amends §§ 143.21, 143.23, 143.24, 143.27, 143.28 and 143.30 and deletes §§ 143.22, 143.25 and 143.26 to reduce issuing agent application fees, minimum annual sales quotas and annual bonding rates.

3. *Persons Affected*

Persons wishing to become an issuing agent within this Commonwealth will be affected by this final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received on this final-form rulemaking.

5. *Cost and Paperwork Requirements*

This final-form rulemaking should not result in any additional paperwork for the Commission or its issuing agents. However, this final-form rulemaking will result in significant reductions in costs to the Commission's issuing agents in the form of reduced application fees and bonding rates.

6. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information about this final-form rulemaking, contact Jason L. DeCoskey, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

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), referred to as the Commonwealth Documents Law, and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(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 authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending §§ 143.21, 143.23, 143.24, 143.27, 143.28 and 143.30 and deleting §§ 143.22, 143.25 and 143.26 to read as set forth in Annex A.

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

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: Fiscal Note 48-500 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTKAKER LICENSES

Subchapter B. APPOINTMENT OF AGENTS

§ 143.21. Appointment of agents.

A person desiring appointment as an agent shall apply to the Commission on the form provided. An application fee of \$200 is required for each location, in the form of a negotiable check or money order payable to "Pennsylvania Game Commission." The completed application, along with the application fee, shall be forwarded to: Pennsylvania Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

§ 143.22. [Reserved].

§ 143.23. Minimum sales requirement.

To continue as an agent, a minimum of 25 license or permit products shall be sold each license year. Qualifying licenses, for the purpose of calculating 25 hunting licenses, will be the regular resident, nonresident hunting and furtakers licenses and mentored hunting permits. Archery, muzzleloader, bear, special wild turkey, migratory game bird and replacement licenses are not included

as qualifying licenses. In addition, an agent shall continue to meet the requirements in § 143.27 (relating to conditions for appointment).

§ 143.24. Fee for reapplication.

If an agent sells less than the required 25 qualifying licenses in a given license year, and is removed by the Commission, or if an agent voluntarily withdraws, a subsequent reapplication requires payment of the application fee.

§ 143.25. [Reserved].

§ 143.26. [Reserved].

§ 143.27. Conditions for appointment.

A person desiring consideration for appointment as an agent shall meet the following conditions:

- (1) Be a resident of this Commonwealth or an entity registered to do business in this Commonwealth.
- (2) Operate a bona fide sporting goods sales outlet where the public expects to find this service.
- (3) Be open to the public during reasonable daylight and evening hours.
- (4) Not operate on a seasonal or part-time basis.
- (5) Agree to and demonstrate ability to provide full license service and cooperation to the public throughout the entire license sales period, and keep records required by the Commission and by statute.
- (6) Provide security to the Commission in an amount of at least \$11,000.

§ 143.28. Application period.

A person requesting appointment as an agent may submit the appropriate completed application form to the Commission in Harrisburg at any time through the license year.

§ 143.30. Notice of disapproved applications.

The Commission will provide prompt written notice of its disapproval of an application submitted under this subchapter and return the application fee to the applicant.

[Pa.B. Doc. No. 23-1506. Filed for public inspection November 3, 2023, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 461a AND 469a]

Slot Machine, Table Game and Associated Equipment Testing and Control; Accounting and Internal Controls; Private Testing and Certification Facilities

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1320(b.1), 13A41(b.1), 13B02, 13C02 and 3302, amends Chapter 461a (relating to slot machine and table game device testing and control) and adds Chapter 469a (relating to private testing and certification facilities) to read as set forth in Annex A.

Purpose of this Final-Form Rulemaking

This final-form rulemaking amends and adds to the existing body of regulation to provide standards for the registration of Private Testing and Certification Facilities in the Commonwealth.

Explanation

Chapter 461a is amended to provide procedures for the testing of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment at private testing and certification facilities. Previously this chapter only applied to slot machines, table game devices and associated equipment. However, with the gaming expansion in the amendments to the Pennsylvania Race Horse and Development and Gaming Act (4 Pa.C.S. §§ 1101—1904) to include interactive gaming, sports wagering and video gaming, the addition of these forms of games and gaming equipment to the testing requirements was necessary.

In addition to adding interactive gaming, sports wagering and video gaming, § 461a.3 (relating to testing and approval of games and gaming devices, generally) is amended to become inclusive of the games and gaming devices which were authorized as part of the 2017 gaming expansion. Additional amendments include appropriate cross references to interactive gaming, sports wagering and video gaming terminal sections of the Board's regulations. Subsection (e) is added to authorize testing of gaming devices at registered private testing and certification facilities (independent testing labs). Subsection (f) is added to clarify the process by which gaming devices that have been reviewed by approved independent labs shall become available for play in this Commonwealth.

Section 461a.4 (relating to submission for testing and approval) is amended to become inclusive of the games and gaming devices which were authorized as part of the 2017 gaming expansion. Subsection (g)(11) is added to provide required submission of a detailed report after an independent test lab review. Subsections (p), (q), (r) and (s) are added to provide for the abbreviated review and approval process required by 4 Pa.C.S. §§ 1320(b.1) and 13A41(b.1) (relating to slot machine testing and certification standards; and table game device and associated equipment testing and certification standards). Additionally, under these provisions, the Board's Executive Director shall approve or deny a completed submission to the Office of Gaming Laboratory Operations within 30 days of the submission when the game or gaming device submitted for testing has been reviewed by a private testing and certification facility. If the Office of Gaming Laboratory Operations requires more time to complete the review of the report from the testing facility, or the submission is deemed not complete, the 30 days may be tolled.

Chapter 469a is added to the Board's regulations. This chapter provides for the registration of a private testing and certification facility as a Registered Gaming Service Provider and sets forth the standards and requirements for registration. Section 469a.1 (relating to private testing and certification facilities generally) sets forth the general provisions of use of a private testing and certification facility by a manufacturer or gaming-related gaming service provider. Section 469a.2 (relating to registration of private testing and certification facilities) provides the registration process for private testing and certification facilities, including application requirements for both the entity and individuals who own or are in a position of authority of the facility. Section 469a.3 (relating to standards and procedures for private testing and certification

facilities) establishes the standards that a private testing and certification facility must meet to be considered suitable for registration. Section 469a.4 (relating to responsibilities of a private testing and certification facility) provides the responsibilities that a private testing and certification facility must fulfill during its term of registration with the Board. Lastly, section 469a.5 (relating to registration term and renewal) sets forth the term and renewal of a registration.

Responses to Comments

The Board received comments from two members of the regulated/prospective regulated community, as well as comments from the Independent Regulatory Review Commission (IRRC). The responses to the comments follow:

1. Fanduel: Request for clarification on modifications to Internet games.

Concern was raised as to the interaction between the proposed amendment to § 461a.4(a) and § 810a.7 (relating to changes to game) of the Board’s regulations which cover changes made to interactive games. It was concerned that as written, amended § 461a.4(a) would require lab testing for all changes made to interactive games approved for play under the interactive gaming regulations. Currently, under § 810a.7 of the regulations and associated Board policy and procedures, changes made in the normal course of business to Board approved interactive games are evaluated pursuant to change management guidelines. The Board does not intend to change its established process and procedures for evaluating changes made to interactive games as a result of the amendment to § 461a.4(a).

2. BMM: General recommendation for adoption of collective terminology in the proposed regulation.

A general comment was given suggesting that the Board use the collective terminology of “gaming products and associated equipment” in lieu of “slot machines, table games, table games devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment” and “submitting entity” rather than “applicant for or holder of a manufacturer license to manufacture slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment, or a gaming related gaming service provider.” The Board declined to adopt this recommendation to avoid potential confusion, as well as to retain consistent terminology usage throughout the entirety of the Board’s regulations.

3. BMM: Clarification requested as to the timeline for document retention under § 469a.4(n).

A concern was raised as to the indeterminant timeline that was created under the initially proposed regulation language. This final-form rulemaking is amended to provide that submission and testing-related documentation shall be retained for a time as the tested item remains approved or authorized. This amended language is consistent with the document retention that the Board’s Bureau of Gaming Laboratory Operations utilizes under the internal review process. Additionally, the independent test labs maintain the option to turn over the covered documents to the Board in lieu of maintaining these records themselves.

Additionally, the following comments were received from IRRC:

1. Compliance with the RRA and regulations of IRRC.

The preamble and RAF to this final-form rulemaking are amended as requested to further expand on the explanations provided and rationale for the regulatory revisions.

2. Section 461a.3. Testing and approval of games and gaming devices, generally—Clarity.

These clarity issues were addressed in Annex A of this final form rulemaking.

3. Section 461a.4. Submission for testing and approval—Clarity; Need; and Fiscal or economic impact.

IRRC reiterated the concerns expressed by Fanduel which previously expressed concern regarding the interaction of §§ 461a.4 and 810a.7 relating to changes to interactive games. Additionally, as there is no intention to change the current procedures for evaluation of changes to interactive games, there is no anticipated fiscal or economic impact.

4. Section 469.2. Registration of private testing and certification facilities.—Clarity.

These clarity issues are addressed in Annex A of this final-form rulemaking.

5. Section 469a.3. Standards for private testing and certification facilities.—Clarity.

These clarity issues are addressed in Annex A of this final-form rulemaking.

6. Section 469a.4. Responsibilities of a private testing and certification facility.—Clarity; Reasonableness of the requirements; and Economic and fiscal impacts.

This clarity issue was further clarified previously. Based upon the amendments made to Annex A, economic impact upon the regulated community is not anticipated.

7. Miscellaneous—Clarity

This clarity issue is addressed in Annex A of this final-form rulemaking.

Fiscal Impact

Commonwealth. The Board does not expect that this final-form rulemaking will have a fiscal impact on the Board or other Commonwealth agencies. Registration applications will be handled by existing Board staff, as will review of game or gaming device submissions.

Political subdivisions. This final-form rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

Private sector. This final-form rulemaking will provide manufacturers and gaming-related gaming service providers the opportunity to have their products reviewed by private testing and certification facilities and seek abbreviated approval by the Board. The testing by private testing and certification facilities will likely require fees to be paid by the party submitting a product for review but will provide for an expedited approval process with the Board, allowing the product to be offered for play or implementation quicker. The Board is not proposing a fee structure for registered private testing facilities to charge.

With regard to entities seeking registration with the Board as a private test facility, they will be required to pay an initial \$500 application fee for the entity and \$60 per principal or other individual requiring submission.

The initial registration fee is \$2,500 for a 5-year term, and \$2,500 per 5-year renewal thereafter.

General public. This final-form rulemaking will not have a fiscal impact on the general public.

Paperwork Requirements

The private testing and certification facility seeking registration will be required to file an application and supplement with the Board. Additionally, any game or gaming product that is submitted to the Bureau of Gaming Laboratory Operations must be accompanied by a testing report prepared by the private testing and certification facility, in addition to the other required submission documents.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 52 Pa.B. 2211 (April 16, 2022) and a copy of the Regulatory Analysis Form to IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking the Board has considered all comments from IRRC, the House and Senate Committees, and the public. With regards to this rulemaking, no comments were received from the Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5(j.2)) on July 12, 2023, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 13, 2023, and approved this final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) referred to as the Commonwealth Documents Law, and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) This final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Parts II and III (relating to gaming; and video gaming).

Order

The Board, acting under 4 Pa.C.S. Parts II and III, orders that:

(1) The regulations of the Board, 58 Pa. Code Chapters 461a and 469a, are amended by amending §§ 461a.3 and 461a.4, and adding §§ 469a.1—469a.5 to read as set forth in Annex A with ellipses referring to the existing text of the regulations.

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

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

DENISE J. SMYLER,
Chairperson

(Editor's Note: See 53 Pa.B. 4068 (July 29, 2023) for IRRC's approval order.)

Fiscal Note: Fiscal Note 125-240 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart E. SLOT MACHINE, TABLE GAME DEVICE AND ASSOCIATED EQUIPMENT TESTING AND CONTROL; ACCOUNTING AND INTERNAL CONTROLS

CHAPTER 461a. SLOT MACHINE, TABLE GAME DEVICE, INTERACTIVE GAME, SPORTS WAGERING DEVICE, VIDEO GAME TERMINAL, AND ASSOCIATED EQUIPMENT TESTING AND CONTROLS

§ 461a.3. Testing and approval of games and gaming devices, generally.

(a) In accordance with sections 1320, 13A41, 13B41 and 3701 of the act, slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment operated in this Commonwealth must be tested and approved in accordance with § 461a.4(g) (relating to submission for testing and approval) and Chapters 810a, 1112a and 1407a (relating to interactive gaming testing and controls; video gaming terminal, redemption terminal and associated equipment testing and certification; and sports wagering testing and controls).

(b) The general cost of establishment and operation of the Board's testing facility shall be paid by each manufacturer licensee and gaming related gaming service provider on a quarterly basis based upon each manufacturer's or gaming related gaming service provider's proportion of the total number of products reviewed.

(c) The Board will require payment of all costs for the testing and approval of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment submitted by manufacturers or gaming related gaming service providers or installed at a licensed facility or offered on an approved interactive gaming or interactive sports wagering web site or mobile application, or offered at a licensed truck stop establishment, based on the actual direct costs incurred by the Board.

(d) The Board will require a manufacturer licensee or gaming related gaming service provider seeking approval of a slot machine, table games, table game device, interactive game, sports wagering device, video gaming terminal or all associated equipment to pay all costs of transportation, inspection and testing.

(e) Testing of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment may also be conducted at registered private testing and certifications facilities in accordance with sections 1320(b.1), 13A41(b.1), 13B02(a)(2) and 3701(e) of the act and Chap-

ter 469a (relating to private testing and certification facilities), and a report of the testing shall be provided to the Board for abbreviated certification and approval.

(f) The Bureau of Gaming Laboratory Operations shall review the report from the registered private testing and certification facility, and prior to installation or use of a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal and all associated equipment at a licensed facility, on an authorized interactive gaming or sports wagering web site or mobile application, or at a licensed truck stop establishment shall report the findings to the Board's Executive Director for abbreviated certification and approval in accordance with § 461a.4.

§ 461a.4. Submission for testing and approval.

(a) A slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or all associated equipment identified in subsection (c) (collectively referred to as "products" or "equipment, device or software"), or a modification thereto, may not be offered for sale, lease or distribution for ultimate use by a licensee in this Commonwealth unless a prototype identical in all mechanical, electrical, electronic and other respects has been tested by the Bureau of Gaming Laboratory Operations and approved by the Board's Executive Director.

(b) When an applicant for, or holder of, a license develops software or a system that is functionally equivalent to any of the slot systems or table game systems enumerated in subsection (c), interactive game systems, sports wagering systems or video gaming terminal systems, that software or system shall be subject to the testing and approval process of this subpart to the same extent as if the software or system were developed by an applicant for, or holder of, a manufacturer license. Any reference in this subpart to the responsibilities of a manufacturer applies to an applicant for, or holder of, a license developing software or systems subject to testing and approval under this subpart.

(c) For the purposes of this section, slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment that shall be submitted for testing and approval include:

- (1) Slot machines, including bill validators and printers.
- (2) Slot monitoring systems, to the extent the systems interface with slot machines and related systems.
- (3) Casino management systems, to the extent the systems interface with slot machines and related systems.
- (4) Player tracking systems, to the extent the systems interface with slot machines and related systems.
- (5) Progressive systems, including wide area progressive systems.
- (6) Gaming voucher systems.
- (7) External bonusing systems.
- (8) Cashless funds transfer systems.
- (9) Machines performing gaming voucher, coupon or jackpot payout transactions.
- (10) Coupon systems, to the extent the systems interface with slot machines and related systems.
- (11) Other related systems.
- (12) Table game devices including:

(i) Electronic gaming tables as described in § 605a.4 (relating to electronic gaming tables).

(ii) Fully automated electronic gaming tables as described in § 605a.5 (relating to fully automated electronic gaming tables and electronic wagering terminals).

(iii) Progressive table game systems as described in § 605a.7 (relating to progressive table games).

(iv) Automated card shuffling devices as described in § 603a.17 (relating to dealing shoes; automated card shuffling devices).

(v) Electronic dealing shoes as described in § 603a.17.

(vi) Electronic wagering systems as described in § 605a.2 (relating to electronic wagering systems).

(vii) Electronic wagering terminals as described in § 605a.5.

(viii) Hybrid gaming tables as described in § 605a.9 (relating to hybrid gaming tables).

(13) Interactive games and interactive gaming platforms and systems.

(14) Sports wagering terminals and ticket redemption terminals.

(15) Video gaming terminals, including bill validators and ticket printers.

(16) Video gaming voucher redemption terminals.

(17) Video gaming terminal tracking and reporting systems.

(d) Slot machine prototypes, table game prototypes, table game device prototypes, interactive game and platform prototypes, sports wagering device prototypes, video gaming terminal prototypes, and all associated equipment prototypes, and modifications thereto, which are subject to testing and approval under this section will be evaluated by the Bureau of Gaming Laboratory Operations for overall operational integrity and compliance with the act, this subpart and technical standards adopted by the Board as published in the *Pennsylvania Bulletin* and posted on the Board's web site. In addition, with regard to any slot machine, fully automated electronic gaming table, electronic wagering terminal or modification thereto, the Bureau of Gaming Laboratory Operations will test for compatibility and compliance with the central control computer and protocol specifications approved by the Department including the ability to communicate with the central control computer for the purpose of transmitting auditing program information, real time information retrieval and activation and disabling of slot machines, fully automated electronic gaming tables and electronic wagering terminals.

* * * * *

(g) When an applicant for, or holder of, a manufacturer license to manufacture slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment or a gaming related gaming service provider seeks Board approval of a slot machine prototype, table game prototype, table game device prototype, as described in subsection (c)(12), interactive game and platform prototypes, sports wagering device prototype, video gaming terminal prototype, associated equipment prototype, or any modification thereto, the manufacturer or gaming related gaming service provider shall submit to the Bureau of Gaming Laboratory Operations the following:

* * * * *

(10) In the case of gaming related services, as described in § 613a.1 (relating to definitions; general requirements), which are submitted by an applicant for or holder of a manufacturer license or gaming related gaming service provider certification:

* * * * *

(v) Sketches or pictures of the equipment used to play the game.

(11) In the case of slot machines, table games, table games devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment or modifications thereto that have been tested by a registered private testing and certification facility, the manufacturer or gaming related gaming service provider shall direct the facility to provide to the Bureau of Gaming Laboratory Operations for review a detailed report from the registered private testing and certification facility regarding the scope of the testing and the results of the testing performed on the slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal, and all associated equipment or modification made thereto, in addition to all other items required in the specific submission checklist to be provided by the manufacturer or gaming related gaming service provider.

(h) At the conclusion of testing of a prototype or modification by the Bureau of Gaming Laboratory Operations, but prior to a decision to approve a prototype or modification, the Board's Executive Director may require a trial period of scope and duration as he deems appropriate to assess the operation of the prototype or modification in a live gaming environment. The conduct of the trial period shall be subject to compliance by the licensed manufacturer, licensed manufacturer designee, applicable licensed suppliers, gaming related gaming service provider and the slot machine licensee with specific terms and conditions as may be required by the Board's Executive Director, which may include development and implementation of product specific accounting and internal controls, periodic data reporting to the Board's Executive Director and compliance with technical standards on trial periods or the prototype or modification adopted by the Board as published in the *Pennsylvania Bulletin* and posted on the Board's web site. The Board's Executive Director may authorize the receipt of compensation by a licensed manufacturer, licensed manufacturer designee, licensed supplier or gaming related gaming service provider during the trial period. The Board's Executive Director may order termination of the trial period if it determines that the licensed manufacturer, licensed manufacturer designee, applicable licensed suppliers, gaming related gaming service provider or the slot machine licensee conducting the trial period has not complied with the terms and conditions required by the Board's Executive Director or that the product is not performing as expected.

(i) At the conclusion of testing of a prototype or modification or after review of the report provided by the registered private testing and certification facility, the Bureau of Gaming Laboratory Operations will report to the Board's Executive Director the results of its testing and the results from the private testing and certification facility, if applicable. Upon receipt of the Bureau of Gaming Laboratory Operations' report, the Board's Executive Director will either:

* * * * *

(k) A licensee is prohibited from installing in its licensed facility or otherwise offering for play equipment,

device or software, or modification thereto, that is required to be tested unless the equipment, device or software has been approved by the Board's Executive Director. A licensee may not modify, alter or tamper with an approved slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment. Equipment, devices, or software installed in a licensed facility or otherwise offered for play in contravention of this requirement will be subject to seizure by the Board.

(l) Notwithstanding subsection (k), the Board's Executive Director may authorize installation of a modification to a slot machine prototype, table game prototype, table game device prototype, interactive game or platform prototype, sports wagering device prototype, video gaming terminal prototype or any associated equipment prototype on an emergency basis to prevent cheating or malfunction, upon the written request of a licensed manufacturer. The request must expressly detail the name and employer of any persons to be involved in the installation of the modification and the manner in which it is to be effected. Within 15 days of receipt of any authorization to install an emergency modification, the manufacturer shall submit the modification for full testing and approval in accordance with this subpart.

(m) A licensee shall immediately notify the Bureau of Gaming Laboratory Operations and the casino compliance representatives at the licensed facility, the Bureau of Gaming Operations for interactive gaming, the Office of Sports Wagering Operations, or the Bureau of Casino Compliance for video gaming of any known or suspected defect or malfunction in any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment installed in its licensed facility or on its interactive gaming web site or mobile application. The licensee shall comply with instructions issued by the Bureau of Gaming Laboratory Operations with regard to the continued operation of the slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment.

(n) Concurrent with the initial receipt of slot machines, a slot machine licensee shall file a slot machine master list as required by § 463a.5 (relating to slot machine, electronic wagering terminal and fully automated electronic gaming table master lists).

(o) The testing of equipment, devices or software under this subpart may require the dismantling of the product and testing that may result in damage to, or destruction of, one or more systems or components. Once submitted for testing, equipment, devices or software will not be returned to the manufacturer.

(p) The Executive Director shall approve, approve with conditions, reject the submitted prototype or modification or require additional testing or a trial period under subsection (h) within 30 days of the complete submission of a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal and all associated equipment by a manufacturer or gaming related gaming service provider that has been submitted to the Board for abbreviated certification with a testing report from a registered private testing and certification facility. The following apply:

(i) A submission will not be considered complete if it does not contain all necessary documentation as required by subsection (g)(11).

(ii) If after the submission is made the Bureau of Gaming Laboratory Operations determines that a submis-

sion is incomplete, the manufacturer or gaming related gaming service provider will be given written notice of the deficiencies in the submission.

(iii) In the instance of an incomplete submission, the 30-day review for abbreviated certification will only begin when the manufacturer or gaming related gaming service provider provides the supplemental information to the Bureau of Gaming Laboratory Operations.

(q) If the Executive Director fails to approve, approve with conditions, reject the submitted prototype or modification or require additional testing or a trial period under subsection (h) within 30 days of the completed submission a slot machine, table game device, interactive game, sports wagering device, video gaming terminal and all associated equipment submitted to the Board for abbreviated certification, the abbreviated certification shall be deemed conditionally approved until the Executive Director renders a decision under subsection (i).

(r) If a manufacturer or gaming related gaming service provider has provided a complete submission to the Bureau of Gaming Laboratory Operations for abbreviated certification but the review of the submission cannot feasibly be completed within 30 days, the manufacturer or gaming related gaming service provider will receive written notice tolling the review of the submission until a time as a review of the submission can be completed.

(s) If during the 30-day review period in subsection (p), the Bureau of Gaming Laboratory Operations preliminarily determines that a complete submission of a slot machine, table game, interactive game, sports wagering device, video gaming terminal and all associated equipment contains an issue or insufficiency likely to negatively affect the integrity of gaming operations, the Bureau of Gaming Laboratory Operations, by written notice to the manufacturer or gaming related gaming service provider, will do all of the following:

- (i) Specify the nature of the insufficiency.
- (ii) Direct that the 30-day review period in subsection (p) be tolled and that any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment not be implemented until approved under subsection (q).

CHAPTER 469a. PRIVATE TESTING AND CERTIFICATION FACILITIES

Sec.	
469a.1.	Private testing and certification facilities generally.
469a.2.	Registration of private testing and certification facilities.
469a.3.	Standards and procedures for private testing and certification facilities.
469a.4.	Responsibilities of a private testing and certification facility.
469a.5.	Registration term and renewal.

§ 469a.1. Private testing and certification facilities generally.

(a) Manufacturers of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment or gaming related gaming service providers may submit products required to be tested under Chapter 461a (relating to slot machine, table game device, interactive game, sports wagering device, video game terminal, and associated equipment testing and controls) to a private testing and certification facility registered with the Board under this chapter.

(b) Manufacturers of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment or

gaming related gaming service providers shall be responsible for any fees or costs imposed by the private testing and certification facility.

(c) Manufacturers of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment or gaming related gaming services providers shall be responsible for all costs incurred by the Board in reviewing the report issued by the private testing and certification facility and approving the slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment.

(d) Slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment tested by a private testing and certification facility shall be considered under the abbreviated certification and approval process under § 461a.4 (relating to submission for testing and approval).

§ 469a.2. Registration of private testing and certification facilities.

(a) A private testing and certification facility seeking to test slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment for use in this Commonwealth shall register with the Board.

(b) A private testing and certification facility shall do all of the following:

- (1) Submit a completed Gaming Service Provider Registration Form and Private Testing and Certification Facility supplement.
- (2) Submit the nonrefundable application fee posted on the Board's web site, which includes the costs of all background investigation.
- (3) Comply with the general application requirements in Chapters 421a and 423a (relating to general provisions; and applications; statement of conditions; wagering restrictions).
- (4) Submit fingerprints of the following individuals in a manner prescribed by the Bureau:
 - (i) Each officer and director of the private testing and certification facility. For purposes of this subparagraph, "officer" means a president, chief executive officer, a chief financial officer and a chief operating officer, and any person routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.
 - (ii) Each individual who has a direct or indirect ownership or beneficial interest of 10% or more or the officers and directors of an entity who have a direct ownership or beneficial interest of 20% or more in the private testing and certification facility, if not otherwise required under subparagraph (i).
 - (c) A person who holds any direct or indirect ownership or beneficial interest in private testing and certification facility or has the right to any profits or distributions directly or indirectly, from the private testing and certification facility may be required to submit fingerprints if the Bureau determines that the submission of fingerprints of the person is necessary to protect the public interest or to enhance the integrity of gaming in this Commonwealth.
 - (d) Each of the individuals required to submit fingerprints under subsections (b)(4) and (c) must be found

qualified by the Board under § 437a.4 (relating to qualification of individuals and entities).

(e) A private testing and certification facility registration will not be issued until all fees and costs have been paid.

(f) The Board will maintain a list of registered private testing and certification facilities.

§ 469a.3. Standards and procedures for private testing and certification facilities.

(a) A private testing and certification facility shall meet all of the following requirements:

(1) Be independent from any manufacturer of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment or gaming related gaming service provider licensed by the Board.

(2) Be accredited in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement.

(3) Demonstrate it is technically competent in testing of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, or all associated equipment in a manner acceptable to and verified by the Bureau of Gaming Laboratory Operations.

(b) A private testing and certification facility and its owners, managers, supervisory personnel and employees may not do any of the following:

(1) Have a financial interest or a controlling interest, direct or otherwise, in a manufacturer of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment or gaming related gaming service providers licensed by the Board.

(2) Participate, consult or otherwise be involved in the design, development, programming or manufacture of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment.

(3) Have any other interest in or involvement with a manufacturer of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment or gaming related gaming service providers that could cause the private testing and certification facility to act in a manner that is not impartial.

§ 469a.4. Responsibilities of a private testing and certification facility.

(a) A holder of a private testing and certification facility registration shall have a continuing duty to comply with the general requirements in Chapters 421a and 423a (relating to general provisions; and applications; statement of conditions; wagering restrictions).

(b) A private testing and certification facility shall notify the Board immediately if a manufacturer of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment or a gaming related gaming service provider licensed by the Board does any of the following:

(1) Attempts, directly or indirectly, to influence improperly a private testing and certification facility or its owners, managers, supervisory personnel and employees,

in regard to a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminals, or all associated equipment, that it, or another person or entity, has submitted for testing or certification for use in a licensed facility, on an authorized interactive gaming or sports wagering web site or mobile application, or at a licensed truck stop establishment.

(2) Engages in any transaction with a private testing and certification facility that the manufacturer or gaming related gaming service provider is using, has used or intends to use to inspect or certify a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminals, or all associated equipment for use in a licensed facility, on an authorized interactive gaming or sports wagering web site or mobile application, or at a licensed truck stop establishment, in which the private testing and certification facility is required to participate, consult or otherwise be involved in the design, development, programming or manufacture of these items. This restriction does not limit a manufacturer or gaming related gaming service provider from engaging the private testing and certification facility to provide consulting services, provided that the services do not directly or indirectly indicate, suggest or imply how to design, develop, program or manufacture these items.

(c) Private testing and certification facilities shall maintain copies of the results of any ISO/IEC 17025 audits or reviews and shall notify the Board in writing of the availability of the results within 15 days of when the results become available to the private testing and certification facility. These copies shall be provided to the Board upon request.

(d) In the interest of preserving the integrity of gaming in the Commonwealth, a private testing and certification facility shall not implement or maintain any procedure or policy or take any action that would do any of the following:

(1) Inhibit or prevent a manufacturer or gaming related gaming service provider from submitting a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal and all associated equipment, for testing and certification for use in any form of regulated gaming in the Commonwealth.

(2) Call into question or tend to erode the independence of the private testing and certification facility from any clients that use the services of the facility.

(e) A private testing facility shall maintain a version-controlled system of testing documentation and methodologies that the facility uses to provide certification and these materials shall be made available to the Board upon request.

(f) Testing shall be conducted in accordance with Chapters 461a, 810a, 1112a and 1407a and all technical standards, policies and industry notices that the Board may implement or issue.

(g) A private testing and certification facility shall not use, rely on or otherwise refer to any testing, results or work product performed by another private testing and certification facility for any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal and all associated equipment that has not previously been approved in writing by the Board.

(h) A private testing and certification facility shall implement and maintain a system of peer review to

monitor the quality of the testing and certification procedures performed by the facility.

(i) A private testing and certification facility shall consult with the Board prior to testing, evaluating, analyzing, certifying, verifying or rendering opinions for or on behalf of the Board relating to any new technology or concept.

(j) A private testing and certification facility shall consult the Board on any questions relating to the testing and certification of any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal, and all associated equipment.

(k) A private testing and certification facility shall keep confidential all information and data prepared or obtained as part of the testing and certification process.

(l) A private testing and certification facility shall implement and maintain security and access control systems designed to secure and protect the confidentiality of all equipment, software and other information entrusted to it as part of the testing and certification process.

(m) A private testing and certification facility shall maintain all test equipment in accordance with the manufacturer's specifications and recommendations and shall provide the Board with evidence of this upon demand.

(n) A private testing and certification facility shall retain all submission and testing-related documentation for such time as the tested item remains approved or authorized for use in this Commonwealth. The records may be maintained in electronic form. The obligation to maintain the records continues even if the private testing and certification facility ceases to be registered with the Board or otherwise ceases its business operation. The private testing and certification facility may turn the records over to the Board in electronic form as an alternative to having to maintain the records after the facility is no longer registered or after the facility ceases business operation.

(o) The Board may conduct periodically an onsite evaluation and review of each private testing and certification facility to evaluate certification results and to verify continued compliance with all registration requirements and protocols.

(p) The Board may establish a system to evaluate the continued quality of the testing and certification performed by a private testing and certification facility which would be posted on the Board's web site.

(q) A private testing and certification facility, its employees, management and owners shall remain independent of any licensed manufacturer of slot machines, table games, table game devices, interactive games, sports wagering device, video gaming terminals and all associated equipment or gaming related gaming service provider.

(r) A private testing and certification facility employee who was employed by, or performed any work for, a manufacturer or gaming related gaming service provider licensed by the Board within 1 year prior to the person's date of employment with the private testing and certification facility may not be permitted to inspect or certify any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal and all associated equipment for use in a licensed facility, on an authorized interactive gaming or sports wagering web site or mobile application, or at a licensed truck stop establishment, with which the person had any involvement whatsoever while employed by the manufacturer or gaming related gaming service provider.

(s) Failure to fully comply with any provision contained herein constitutes a violation and may result in Board-imposed administrative sanctions, up to and including revocation, against the individual or entity to whom the registration was issued.

§ 469a.5. Registration term and renewal.

(a) Private testing and certification facility registrations and renewals issued under this chapter will be valid for 5 years from the date of Board approval.

(b) Registered private testing and certification facilities shall submit to the Board a completed renewal application or form and renewal fee at least 6 months prior to the expiration of a registration.

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