

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1, 3 AND 5]

Regulations Governing the Public Utility Commission's General Provisions, 52 Pa. Code Chapters 1, 3, and 5 (relating to Rules of Administrative Practice and Procedure; Special Provisions; and Formal Proceedings)

Public Meeting held
August 22, 2024

Commissioners Present: Stephen M. DeFrank, Chairperson; Kimberly Barrow, Vice Chairperson, statement follows; Ralph V. Yanora; Kathryn L. Zerfuss, statement follows; John F. Coleman, Jr., statement follows, dissenting

Regulations Governing the Public Utility Commission's General Provisions, 52 Pa. Code Chapters 1, 3, and 5 (relating to Rules of Administrative Practice and Procedure; Special Provisions; and Formal Proceedings); Docket No. L-2023-3041347

Clarified Notice of Proposed Rulemaking Order

By the Commission:

The Pennsylvania Public Utility Commission (PUC) has commenced this Notice of Proposed Rulemaking Order (NOPR) to seek comments on proposed amendments to the PUC's regulations at 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01—5.633 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings), (Chapters 1, 3, and 5, respectively). Specifically, with this NOPR, the PUC proposes changes to its regulations in order to update and clarify the general provisions in Subpart A of Title 52 surrounding practice before the PUC.¹ This NOPR is comprised of a PUC Order, which is the Preamble, and an Annex A, which presents the proposed changes to the PUC's Rules of Administrative Practice.

Background

The general provisions regarding practice before the PUC were last revised in 2006.² Since then, our jurisdictional responsibilities have changed considerably, and important technological innovations and advancements have occurred that, if implemented, could bring much-needed efficiencies to the current processes and procedures in PUC administrative hearings and proceedings. As such, in the first quarter of 2016, the PUC announced its intention to revise the PUC's rules of practice and

procedure, 52 Pa. Code Chapters 1, 3 and 5, by convening a series of informal stakeholder meetings wherein PUC Staff and attorneys representing clients that regularly practice before the PUC could identify issues and concerns with the existing rules as well as recommend amended language for the PUC's consideration. We stated our intention to solicit additional input regarding proposed revisions and our commitment to carefully consider the views of all interested parties prior to taking formal action. Upon extensive consideration of the input we received from stakeholders, we now enter this Notice of Proposed Rulemaking Order for the requisite review and public comment.

Discussion

I. Proposed Amendments To Chapter 1—Rules Of Administrative Practice And Procedure

The PUC recognizes that the rules of administrative practice and procedure need to be updated in order to make PUC proceedings operate in a more efficient manner. Therefore, with the aim of increasing efficiency and clarity in PUC proceedings, the PUC proposes the following amendments to the regulations at 52 Pa. Code §§ 1.1—1.96 for the rationales articulated herein.

52 Pa. Code § 1.3. Information and Special Instructions.

Proposed Change

Section 1.3(a) would be amended to replace “application” with “request.”

Section 1.3(a)(2) would be amended to identify clearly that overnight delivery, certified or priority mail are the mailing options other than first-class mail.

Rationale for Proposed Change

The proposed amendment to Section 1.3(a) would streamline the process for seeking information about the PUC's procedural rules or information regarding hearings. The proposed amendment would clarify that an individual seeking procedural information no longer needs to file an “application,” which usually requires approval by the PUC or PUC staff. Additionally, the proposed amendment to Section 1.3(a)(2) is intended to clarify what is meant by the term “mail other than first-class” by deleting it and specifically identifying those types of mail service.

52 Pa. Code § 1.4. Filing Generally.

Proposed Change

Section 1.4(a)(2) would be amended to identify clearly that overnight delivery, certified or priority mail are the mailing options other than first-class mail for filings made with the PUC.

Rationale for Proposed Change

The proposed amendment to Section 1.4(a)(2) is intended to bring clarity to what is meant by the term “mail other than first class” by deleting it and specifically identifying those types of mail service.

52 Pa. Code § 1.5(a). Amendment to Rules.

Proposed Change

Section 1.5(a) is amended to remove “persons” from who may file an application based on the proposed new definition of “person” in Section 1.8 (relating to definitions).

¹ The clarifications to this NOPR Order and Annex were adopted by the Commission in the Order entered on August 22, 2024 at this docket. Regulations Governing the Public Utility Commission's General Provisions, 52 Pa. Code Chapters 1, 3, and 5 (relating to Rules of Administrative Practice and Procedure; Special Provisions; and Formal Proceedings), Docket No. L-2023-3041347 (Order Clarifying Notice of Proposed Rulemaking Order entered on May 12, 2022) (August 22, 2024 Order). For purposes of the rulemaking, this clarified NOPR Order and Annex A will be published in the *Pennsylvania Bulletin*.

² Final Rulemaking For the Revision of Chapters 1, 3, and 5 of Title 52 of the *Pennsylvania Code* Pertaining to Practice and Procedure Before the Commission, Docket No. L-00020156 (Final Rulemaking Order entered January 4, 2006), effective April 29, 2006, 36 Pa.B. 2097 (4/29/2006). On April 28, 2006, a Secretarial Letter was issued providing that for any PUC proceeding initiated prior to April 29, 2006, all active parties could jointly seek a determination for the assigned presiding officer or from the PUC that the revisions would apply to that proceeding, 36 Pa.B. 2281 (5/13/2006). That rulemaking may be viewed on the website of the Pennsylvania Independent Regulatory Review Commission as IRRR Number 2441, at https://www.irrc.state.pa.us/regulations/find_a_regulation.cfm.

Rationale for Proposed Change

The proposed amendment to Section 1.5(a) would allow parties in addition to “persons” (e.g., corporations and municipal corporations) to file applications requesting a general and permanent change in the PUC’s rules of administrative practice and procedure.

*52 Pa. Code § 1.6. Commission Office Hours.**Proposed Change*

Section 1.6 would be amended to allow the PUC to modify its office hours.

Rationale for Proposed Change

The proposed amendment to Section 1.6 is intended to recognize that the PUC, as an independent agency, may set its own hours.

*52 Pa. Code § 1.7. Sessions of the Commission.**Proposed Changes*

Section 1.7 would be amended to incorporate livestreamed and/or telephone public meetings.

Rationale for Proposed Changes

The proposed amendment to Section 1.7 is intended to recognize that the PUC has begun to use livestreamed and telephone public meetings more regularly.

*52 Pa. Code § 1.8. Definitions.**Proposed Changes*

“Act” would be amended to replace Section “3315” with “3316.”

“Adjudication” would be amended to clarify qualifying proceedings under the definition.

“Applicants” would be amended to change the term to singular form and to clarify qualifying entities under the definition.

“Adversarial proceeding” would be amended to replace “other persons” with “parties” to be consistent with the proposed new definition of “person” in this section.

“Authorized agent” would be amended to replace “person” with “representative of a filing user” to be consistent with the proposed new definition of “person” in this section. The definition would also be amended to allow anyone with permission to submit filings to do so, which lowers the previous standard from anyone with permission to “legally act” on behalf of the filing user.

“Corporation” would be added to refer to the definition of “corporation” set forth at 66 Pa.C.S. § 102.

“Certified legal intern” would be added to define the qualifications and conditions under which law students may participate in legal matters before the Commission.

“Electronic mail” would be amended to address communication methods, including prospective ones such as text messaging.

“Filing user” would be amended to include corporations and municipal corporations, which were previously included in the definition of “person,” and to provide the PUC’s updated website URL.

“Initial decision” would be amended to replace “participant” with “party.”

“Intervenor” would be amended to include corporations and municipal corporations, which were previously included in the definition of “person.”

“Municipal corporation” would be added to refer to the definition of “municipal corporation” set forth at 66 Pa.C.S. § 102.

“Nonadversarial proceeding” would be amended to remove references to “person.”

“Notarial officer” would be amended to replace “persons” with “individuals” in light of the proposed change to the definition of “person.”

“Party” would be amended to include “corporation” and “municipal corporation” in light of the proposed change to the definition of “person.”

“Person” would be amended to refer to the definition of “person” set forth at 66 Pa.C.S. § 102.

“Petitioners” would be redefined as “petitioner” and the definition amended to replace the term “persons” with “party.”

“Presiding officer” would be amended to replace the reference to “a person” with “a Commission employee.”

“Principal” would be amended to replace the reference to “a party” with “an individual” who can take action on behalf of a partnership, association, corporation, or municipal corporation, and to clarify that the individual can authorize counsel to take specified action on behalf of a partnership, association, corporation, or municipal corporation.

“Protestants” would be amended to change the term to singular form and to replace “persons” with “a party” to reflect the change to the definition of “person.”

“Qualified document” would be amended to update the PUC’s website address and to clarify existing language concerning types of documents that can be filed with the PUC electronically.

“Rate proceeding” would be amended for brevity.

“Recommended decision” would be amended for clarity.

“Respondents” would be amended to change the term to singular form and for brevity and to replace reference to “person” with “a party.”

“Secretary” would be amended for brevity.

“Staff” would be amended to remove the outdated reference to the “Office of Trial Staff” and to incorporate reference to the “Bureau of Investigation and Enforcement.”

“Statutory advocate” would be amended to remove the outdated reference to the “Office of Trial Staff” and incorporate reference to the “Bureau of Investigation and Enforcement.”

“Submittal” would be amended for clarity.

“Telefacsimile transmittal” would be redefined as “fax transmittal” and amended for clarity.

“Tentative Decision” would be replaced with “Tentative Order” and the definition would be amended for clarity.

“Trade Secret” would be amended for brevity and clarity.

“Writing or written” would be amended to update the definition.

Rationale for Proposed Changes

The proposed amendments to Section 1.8 would revise the definition of “person” to bring our regulations into line with the definition of “person” as set forth in Section 102 of the Public Utility Code (66 Pa.C.S. § 102). The proposed amendments also update the terms “corporation,” and “municipal corporation” and further incorporate those terms into the existing definition of “party” Where appro-

priate, the term “person(s)” has been replaced with “party” or “parties” to reflect the regulation’s applicability to persons, corporations, and municipal corporations. The proposed amendments to Section 1.8 would also add, clarify and update certain existing definitions.

Additionally, “act” would be replaced with “Act” throughout the regulations when necessary to refer to the Public Utility Code (Code).

52 Pa. Code § 1.13. Issuance of Commission Orders.

Proposed Changes

Section 1.13 would be amended for clarity and to address references to PUC orders.

Rationale for Proposed Changes

The proposed amendments to Section 1.13 are intended to provide brevity and clarity.

52 Pa. Code § 1.15. Extensions of Time and Continuances.

Proposed Changes

Section 1.15(a)(1) would be amended to change “person” to “Commission employee” and would amend the language concerning notice of the PUC.

Section 1.15(b) would be amended to add “to the extent possible” to the end of the section, regarding when requests for continuances should be filed.

Rationale for Proposed Changes

The proposed amendments to Section 1.15(a)(1) are primarily intended to provide clarity as to who at the Commission is authorized to grant an extension of a time period for filing pursuant to the Commission’s regulations, a prior Commission order, or other notice by an authorized Commission employee.

Concerning Section 1.15(b), the PUC provides its administrative law judges (ALJs) who preside over PUC proceedings with the authority to regulate the course of the proceeding, under 52 Pa. Code § 5.483. Nevertheless, there are several existing PUC regulations that either impair ALJ control or do not reflect what occurs in practice.

For example, the PUC’s regulation at Section 1.15(b) provides that requests for a continuance of hearings should be filed at least five (5) days prior to the hearing date. However, it is not always possible for a party to submit a request for continuance at least five (5) days prior to the hearing date, especially in the event of illness, and judges are oftentimes faced with requests for a continuance less than five (5) days before the start of a hearing. Therefore, the proposed amendment to Section 1.15(b) is intended to recognize that it is not always possible for a party to submit a request for continuance at least five (5) days prior to the hearing date, especially in the event of illness. As Judges are often faced with requests for a continuance that are submitted less than five (5) days before the start of a hearing, the proposed amendment provides presiding officers flexibility in their authority to regulate the course of a proceeding.

Likewise, presiding ALJs often address service of documents by parties during prehearing conferences. A party may express a preference as to how he or she wishes to be served during the course of the proceeding. Therefore, Sections 5.222 (related to initiation of prehearing conferences in nonrate proceedings) and 5.224 (related to Prehearing conference in rate proceedings) would be amended to afford the presiding officer with the authority to address and determine the method of service on parties.

52 Pa. Code § 1.16. Issuance of decisions by presiding officers.

Proposed Changes

Section 1.16(b) would be amended to delete the existing language describing the process for serving presiding officer decisions and simply refer to 708(e) of the Public Utility Code, 66 Pa.C.S. § 708(e).

Rationale For Proposed Changes

The proposed amendment to Section 1.16(b) would make the regulation consistent with the process for serving decisions by presiding officers as set forth by the General Assembly in Section 708(e) of the Public Utility Code, 66 Pa.C.S. § 708(e).

52 Pa. Code § 1.21. Appearance.

Proposed Changes

The title of Section 1.21 would be amended to “appearance in nonadversarial or informal proceedings” to clarify that it deals with appearances in PUC nonadversarial and informal proceedings only. The text of Section 1.21 would be amended to change “person” to “party” to specify who can appear on behalf of a party involved in a nonadversarial or informal PUC proceedings.

Section 1.21(c) would be amended to allow a non-attorney third party representative holding the power of attorney for an individual consumer to represent that individual during periods of disability or incapacity, or both.

Rationale for Proposed Changes

The proposed amendment to Section 1.21 is intended to provide a clear distinction between nonadversarial and informal proceedings and adversarial proceeding and states who can appear on behalf of a party in a nonadversarial and informal PUC proceedings. The proposed amendment also provides consistency with the proposed amended definition of “party” set forth in Section 1.8.

Further, various administrative agencies permit a party to be represented by a nonlawyer in some circumstances. For example, an individual claiming unemployment compensation (UC) may be represented by a duly authorized agent before the Pa. Department of Labor and Industry, the Unemployment Compensation Board of Review, and a UC referee. See *Harkness v. Unemployment Compensation Bd. of Rev.*, 920 A.2d 162 (Pa. 2007). Also, nonlawyer representatives are permitted to appear on behalf of individuals appearing before the Pa. Department of Human Services, Office of Hearings an Appeals. See *Nolan v. Department of Public Welfare*, 673 A.2d 414 (Pa. Cmwlth. 1995); and 55 Pa. Code §§ 275.2, 275.3(a), and 275.4(a)(1)(iv). Additionally, the Pa. Department of Revenue, Board of Appeals, specifies that a taxpayer filing an appeal may appear on his own behalf or be represented by someone else with the required technical knowledge who is not necessarily an attorney.

Accordingly, we propose a more permissive approach to representation similar to other administrative agencies would better facilitate the development of evidentiary records in complaint proceedings involving individual consumers.

The proposed amendment to Section 1.21(c) is intended to clarify that a non-attorney third-party representative holding power of attorney may represent an individual in nonadversarial proceedings during periods of disability or incapacity, or both.

52 Pa. Code § 1.22. Appearance by Attorney or Certified Legal Intern.

Proposed Changes

The title of Section 1.22 would be amended to “appearance in adversarial proceedings” to clarify that is dealing with appearances in PUC adversarial proceedings only. The amended section would define who can appear on behalf of a party involved in an adversarial proceeding. The proposed amendments also include “corporations” and “municipal corporations” in order to provide consistency with the proposed amended definition of “party” set forth in Section 1.8.

Section 1.22(a) would be amended to allow an authorized corporate official to represent small businesses or partnerships in adversarial proceedings, and to allow a non-attorney third party representative holding the power of attorney for an individual consumer to represent that individual during periods of disability or incapacity, or both.

Section 1.22(b) would be amended by removing the existing language and replacing it with language concerning representation before the Commission in adversarial proceedings.

Section 1.22(c) would be amended by deleting the existing language and replacing it with language stating that Section 1.22(b) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney). Section 1.22(c) is also amended by inserting the language currently existing at 1.22(b) concerning appearance by attorneys not licensed to practice in the Commonwealth.

Rationale for Proposed Changes

The proposed amendments to Section 1.22 are intended to adequately show that corporations and municipal corporations are subject to this section and clearly state who can appear on their behalf in an adversarial proceeding.

Sections 1.21 through 1.23 of our current rules operate to preclude a corporation or partnership from appearing before the PUC in an adversarial proceeding unless they have legal counsel. This rule relies on case precedent holding that a corporation may appear in court only through an attorney at law admitted to practice before the court. See *Walacavage v. Excell 2000*, 480 A.2d 281 (Pa. Super. 1984), citing *Simbraw, Inc. v. United States*, 367 F.2d 373 (3rd Cir. 1966); *MOVE Organization v. Department of Justice*, 555 F. Supp. 684 (E.D.Pa. 1983); *MacNeil v. Hearst Corp.*, 160 F. Supp. 157 (D.Del. 1958); *Merco Construction Engineers, Inc., v. Municipal Court*, 581 P.2d 636 (Ca. 1978); *Oahu Plumbing Sheet Metal, Ltd. v. Kona Construction, Inc.*, 590 P.2d 570 (Haw. 1979).

However, Rule 207 in the Rules of Procedure of the Magisterial District Judges (MDJ) in Pennsylvania allows corporate or partnership entities to appear pro se although, as noted that is not the case with the Court of Common Pleas and higher courts. It may be that PUC proceedings are more akin to MDJ proceedings, albeit at an administrative level, given the rights of appeal to Pennsylvania courts set out in the Code. Accordingly, the proposed amendment to Section 1.22(a) is intended to grant a more permissive approach to representation for individuals, small businesses, and partnerships, to better facilitate the development of evidentiary records in complaint proceedings involving individual consumers, and the ability of small Pennsylvania businesses to operate and seek redress before the PUC.

As part of the PUC’s consideration of whether small businesses and partnerships should continue to be precluded from appearing before the PUC without legal counsel in adversarial proceedings, we seek comment on a prospective definition for “small business,” including factors such as size or revenue or the potential adoption of an appropriate definition contained in other law.

52 Pa. Code § 1.23(a). Other Representation Prohibited at Hearings.

Proposed Changes

Section 1.23(a) would be amended to replace “persons” with “parties.”

Rationale for Proposed Changes

The proposed amendment to Section 1.23(a) is intended to clarify that all entities encompassed by the proposed amended definition of “party” in Section 1.8 are subject to this section.

52 Pa. Code § 1.24. Notice of Appearance or Withdrawal.

Proposed Changes

Section 1.24(b)(2)(i)(B) would be amended to replace “not licensed in this Commonwealth” with “appearing pro hac vice” and to remove parentheses in “jurisdiction(s).”

Section 1.24(b)(2)(i)(D) would be amended to change “person” to “party.”

Section 1.24(b)(2)(ii)(A) would be amended to include language that the attorney must serve notice of appearance.

Section 1.24(b)(3) would be amended to require the attorney to serve notice of withdrawal on the Secretary, the parties and the presiding officer.

Rationale for Proposed Changes

The proposed amendment to Section 1.24(b)(2)(i)(B) is intended to use the appropriate legal language for appearing pro hac vice before the Commonwealth.

The proposed amendment to Section 1.24(b)(2)(i)(D) is intended to create consistency with the proposed amended definition of “person” set forth in Section 1.8.

The proposed amendment to Section 1.24(b)(2)(ii)(A) is intended to clarify that the attorney must serve notice of appearance on the parties and a certificate of service with the Secretary.

The proposed amendment to Section 1.24(b)(3) is intended to clarify that the attorney must serve notice of withdrawal on the parties and presiding officer in addition to the Secretary.

52 Pa. Code § 1.27(a). Suspension and Disbarment.

Proposed Changes

Section 1.27(a) would be amended to change “person” to “individual.”

Rationale for Proposed Changes

The proposed amendment to Section 1.27(a) is intended to create consistency with the proposed amended definition of “person” set forth in Section 1.8.

52 Pa. Code § 1.31. Requirements for Documentary Filings.

Proposed Changes

Section 1.31(c)(3) would be amended to replace “person” with “party.”

Rationale for Proposed Changes

The proposed amendment to Section 1.31(c)(3) clarify that all entities encompassed by the proposed amended definition of “party” in Section 1.8 are subject to this section.

*52 Pa. Code § 1.32. Filing Specifications.**Proposed Changes*

Section 1.32(a)(1) would be amended to require that all typewritten documents be one-sided and have margins of at least one inch on all sides.

Section 1.32(a)(2) would be amended to require double-spaced text, except for quotations with a few lines of more, which are to be single-spaced and indented, all printed documents would have to be in at least 12-point font with 10-point font allowed for footnotes, and margins of at least 1 inch throughout.

Section 1.32(b)(1) would be deleted in its entirety.

Section 1.32(b) would further be amended to explain how filings must be filed electronically using the PUC’s electronic filing system as it specifies the filing requirements and the PUC’s requirement that documentary filings be searchable PDFs.

Rationale for Proposed Changes

The proposed amendments in Section 1.32(a) are intended to ensure that documents submitted to the PUC are accessible and legible. The proposed amendments in Section 1.32(b) are intended to ensure that submitted electronic documents are accessible to the PUC’s staff, including the ability to search submitted PDF documents. The proposed deletion of Section 1.32(b)(1), concerning participation in electronic filing, is to reduce confusion given that the PUC is also proposing amendments to Section 1.53, concerning service by the PUC, and Section 1.54, concerning service by a party, which will address participation in electronic service and filing, respectively.

*52 Pa. Code § 1.33. Incorporation by Reference.**Proposed Changes*

Section 1.33(b) would be amended to remove the specific language “person filing the current document ascertains that the.”

Rationale for Proposed Changes

The proposed amendment to Section 1.33(b) is intended to provide clarity and brevity.

*52 Pa. Code § 1.35. Execution.**Proposed Changes*

Section 1.35(b) would be amended to change “person” to “individual” and “act” to “Act.”

Rationale for Proposed Changes

The proposed amendments Section 1.35(b) are intended to create consistency with the revised definitions in Section 1.8.

*52 Pa. Code § 1.36. Verification.**Proposed Changes*

Section 1.36(a) would be amended to encourage parties to submit a cover letter with their petition if the petition contains no averment or denial of fact not appearing of record. Section 1.36(a) would be further amended to omit language providing that the verification may be signed by an individual other than a filing user.

Rationale for Proposed Changes

The amendment to incorporate a cover letter is proposed to aid the Secretary’s staff in processing filings. It is a best practice for the filing attorney to outwardly communicate whether such averment or denial is made, as the PUC employees processing the filing may or may not be attorneys. Therefore, adding this information in a cover letter will save the Secretary’s staff time, as they will not have to review the filing to determine whether the petition contains an averment or denial of fact.

Existing language in Section 1.36(a) states that verifications signed by someone other than the filing user must be refiled with a corrected verification within three days. This proposed amendment removing this language is intended to clarify that verifications must be signed by the appropriate individual upon filing and that improperly verified filings will be rejected.

*52 Pa. Code § 1.37. Number of Copies.**Proposed Changes*

Section 1.37(a)(3) would be amended to include and allow other electronic storage devices, such as USB flash drives.

Rationale for Proposed Changes

The proposed amendment to Section 1.37(a)(3) is intended to reflect current practice whereby many documents are already submitted to the Secretary’s Bureau by USB flash drive.

*52 Pa. Code § 1.43. Schedule of Fees Payable to the Commission.**Proposed Changes*

Section 1.43(a) would be amended to communicate that the PUC’s filing fees are non-refundable.

Section 1.43(a) would also be amended to update the schedule of fees charged by the PUC for processing various filings. Further, Section 1.43(a) would be amended to note that the category of “applications for amending a certificate” of public convenience (CPC) includes an application to abandon a CPC.

Rationale for Proposed Changes

The proposed amendment to Section 1.43(a) is intended to address requests by filers seeking a refund of filing fees paid to the PUC. The filing fees collected by the PUC are directly related to the costs of processing filings. If these fees were refundable, the PUC would be responsible for the costs associated with filing, whether the purposes of the filing were met or not. Therefore, it is appropriate that the regulation be amended to clarify that the PUC’s filing fees are non-refundable.

The proposed amendment to Section 1.43(a) would also eliminate certain fees. The PUC proposes to eliminate the fees related to intangible transition property notices since they relate to the 1997 restructuring of the electric industry and the retirement of resulting stranded costs and are therefore obsolete.³ The PUC’s microfiche records have all been converted to digital format, eliminating the need for any fees related to copies made of microfiche and microfilm rolls. The fee for filing an application for a certificate to discontinue service for intrastate common carrier passenger or household goods in use has been

³ See Perfection of Security Interests in Intangible Transition Property, Docket No. L-00970122 (Final Rulemaking Order adopted July 10, 1997); see also 27 Pa.B. 5420 (10/18/1997): <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol27/27-42/1662.html> (last accessed on November 27, 2023). That proceeding is sometimes referred to at Docket No. L-970122.

eliminated, due to the difficulty of obtaining this de minimis amount from carriers who have gone out of business.

The proposed amendment to Section 1.43(a) would also add fees that have been implemented by the PUC since this regulation was last updated, including fees for applications to begin telecommunications service, applications to be a pipeline operator, applications to be a conservation service provider, and applications to be a utility valuation expert. Further, the fee schedule would be updated to clarify that applications to amend a CPC include applications to abandon a CPC.

In addition to the proposed amendments to Section 1.43(a), the PUC solicits comment on the proposed schedule of fees, including whether certain fees are still relevant given changes in PUC processes.

52 Pa. Code § 1.51. Instructions for Service, Notice and Protest.

Proposed Changes

Section 1.51(c) would be added to state that where an individual party is a victim of domestic violence and has a court order providing clear evidence of domestic violence, that party's address will be redacted on the service list.

Rationale for Proposed Changes

The addition of Section 1.51(c) serves an important role in protecting the personal information of domestic violence victims. There is no need for the personal information of domestic violence victims to be posted on the PUC's website, which is accessible to the general public.

52 Pa. Code § 1.53. Service by the Commission.

Proposed Changes

Section 1.53(a) would be amended to clarify that a person is not required to register for the PUC's electronic filing system to be a party in a PUC proceeding nor do they have to register to agree to the electronic service of documents by the PUC.

Section 1.53(b)(1) would be amended to clearly state that if a party has not agreed to electronic service they will continue to be served via first-class mail and that the recipient of the first-class mail would be the party's designated contact registered with the PUC.

Section 1.53(b)(3) would be amended to incorporate the current reality of the PUC's electronic filing system and also to add that a party does not have to have created a registered eService account with the PUC as a prerequisite to explicitly agreeing to the PUC serving the party with documents via electronic mail (e-mail). This section would be restructured by including subsections (i) and (ii) to differentiate between parties that open and use an account on the PUC's electronic filing system and those without an account but who agree to service by e-mail.

Section 1.53(c) would be amended to change "act" to "Act," incorporate the reality of a respondent utility that is an e-filing user, and to reflect that service of complaints in all hearings, investigations, and proceedings pending before the PUC can be made by e-mail upon agreement by each party, under 66 Pa.C.S. § 702 (relating to service of complaints on parties).

Rationale for Proposed Changes

The proposed amendment to Section 1.53(a) is intended to clarify that persons are not required to register to use the electronic filing system to be a party in a PUC

proceeding and shall continue to be served documents in paper form by the PUC unless they have agreed to electronic service.

The proposed amendment to Section 1.53(b)(1) is intended to create a more uniform service process to reduce potential confusion for PUC staff. We note that all persons appearing before the PUC are required to provide and maintain updated contact information, under Section 1.24.

The proposed amendment to Section 1.53(b)(3) originated from the PUC's waiver of service requirements during the COVID-19 pandemic, during which the PUC permitted electronic service by the PUC on all parties regardless of whether a particular party agreed to electronic service.⁴ The PUC has discerned that the flexibility of electronic service has provided additional efficiency across PUC operations; these include benefits to pro se complainants who rely on e-mail for more expedient service to avoid missing regulatory filing deadlines as well as allowing the Secretary's Bureau to more readily accept large filings.

The proposed amendment to Section 1.53(c) is intended to create consistency with the proposed new definitions in Section 1.8 and to incorporate the General Assembly's 2019 amendment to 66 Pa.C.S. § 702 that provides an explicit exception to the certified mailing of a complaint for a respondent party that has created a registered account with the PUC's electronic filing system.

52 Pa. Code § 1.54. Service by a Party.

Proposed Changes

Section 1.54(a) would be amended to clarify that a person will not be required to register to use the electronic filing system in order to serve documents on other parties. Section 1.54(b)(1) would be amended to clearly state that if a party has not agreed to the electronic service of documents, the other parties to the proceeding must continue to serve them their filings via first-class mail. Section 1.54(b)(3) would be amended to add the allowance of e-mail service when a party explicitly agrees to receive documents filed with the PUC in this fashion regarding a particular proceeding. This section would be restructured to differentiate between parties that open and use an account on the PUC's electronic filing system and those without an account but who agree to receive documents by e-mail.

Section 1.54(c) would be amended to remove "and persons or individuals."

Rationale for Proposed Changes

The proposed amendment to Section 1.54(b)(3) originated from the PUC's waiver of service requirements during the COVID-19 pandemic, during which the PUC directed that electronic service on PUC staff in proceedings pending before it, whether staff is a party or otherwise, be exclusively electronic unless the parties agreed otherwise.⁵ Allowing service by e-mail to parties who explicitly agree to e-mail service improves the efficiency of PUC operations.

The proposed amendment to Section 1.54(c) is intended for clarity and brevity and for consistency with the proposed new definitions in Section 1.8.

⁴ On March 20, 2020, Chairman Gladys Brown Dutrieuille issued an Emergency Order that provided for the suspension of regulatory and statutory deadlines under appropriate circumstances and modified filing and service requirements. The Commission unanimously ratified the March 20 Emergency Order at its March 26, 2020 Public Meeting. See also September 15, 2022 Order, Docket No. M-2021-3028321.

⁵ See September 15, 2022 Order, at Docket No. M-2021-3028321.

*52 Pa. Code § 1.56. Date of Service.**Proposed Changes*

Section 1.56(b) would be amended to remove “and the document is served.”

Rationale for Proposed Changes

The proposed amendment to Section 1.56(b) is intended for brevity and clarity.

*52 Pa. Code § 1.59. Number of Copies Served.**Proposed Changes*

Section 1.59 would be amended to provide the presiding officer with the discretion to determine the appropriate number of copies to be served on the presiding officer and other parties in a proceeding.

Rationale for Proposed Changes

Section 1.59 delineates the number of hard copies that shall be served on the presiding officer as well as the parties. The proposed amendment to Section 1.59 is intended to afford presiding officers with control to determine the appropriate number of copies that should be served in a proceeding, especially since serving hard copies may be unnecessary due to electronic service.

*52 Pa. Code § 1.61. Notice and Filing of Copies of Pleadings before other Tribunals.**Proposed Changes*

Section 1.61(a) would be amended to change “act” to “Act” and “person” to “entity.”

Section 1.61(b) would be amended to change required service from the Office of Trial Staff to the PUC’s Bureau of Investigation and Enforcement.

Section 1.61(d) would be amended to change “act” to “Act” and “person” to “entity.”

Rationale for Proposed Changes

The proposed amendments to Section 1.61(a) and (d) are intended to create consistency with the proposed new definitions in Section 1.8.

The proposed amendment to Section 1.61(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

*52 Pa. Code § 1.71. Statement of Objectives.**Proposed Changes*

Section 1.71 would be amended to change “act” to “Act.”

Rationale for Proposed Changes

The proposed amendments to Section 1.71 are intended to create consistency with the proposed new definitions in Section 1.8.

*52 Pa. Code § 1.72. Content Review of Formal Case Files.**Proposed Changes*

Section 1.72 would be amended to remove procedures for written requests for access to PUC records.

Rationale for Proposed Changes

Sections 1.71–1.77 of the PUC’s regulations relate to 1) what documents should be kept for inspection at the Secretary’s Bureau’s public filing office, and 2) the process for getting non-confidential documents from the PUC and challenging determinations under those provisions. Under the Right to Know Law (RTK Law), 65 P.S. §§ 67.101–67.3104, that was in place at the time these regulations were last amended, agencies had to have their own processes for responding to written requests for records.

Now that process is unified under the RTK Law within the Office of Open Records (OOR) appeal process.

Therefore, the PUC’s regulations about written requests for review of public documents are now moot and are potentially in conflict with the RTK Law.

We seek comment on whether the regulations for written requests for access to PUC files are still needed given the RTK Law and the publicly-accessible PUC docketing system available on the PUC’s website.

*52 Pa. Code § 1.73. Fiscal Records.**Proposed Changes*

Section 1.73(b) would be amended to change “act” to “Act.”

Rationale for Proposed Changes

The proposed amendment to Section 1.73(b) is intended to update the reference from a prior version of the RTK Law to Act 3 of 2008 which created the newest version of the RTK Law.

*52 Pa. Code § 1.75. Review of Staff Determination.**Proposed Changes*

Section 1.75 would be removed from the PUC’s regulations.

Rationale for Proposed Changes

The proposed amendments to Section 1.75 are intended to bring PUC regulations in line with the RTK Law, now that the process for requesting access to PUC records is unified under the law. While it is still useful to have a regulation listing what must be kept for public inspection and processes for addressing informal requests for records, our regulations concerning written requests for review of public documents are now moot and are potentially in conflict with the RTK Law.

*52 Pa. Code § 1.77. Extensions of Time to Review Folders.**Proposed Changes*

Section 1.77 would be removed from the PUC’s regulations.

Rationale for Proposed Changes

The proposed amendments to Section 1.77 are intended to bring PUC regulations in line with the RTK Law, now that the process for requesting access to PUC records is unified under the law. While it is still useful to have a regulation listing what must be kept for public inspection and processes for addressing informal requests for records, our regulations concerning written requests for review of public documents are now moot and are potentially in conflict with the RTK Law.

*52 Pa. Code § 1.96. Unofficial Statements and Opinions by Commission Personnel.**Proposed Changes*

Section 1.96 would be amended to correct the spelling error in “employees” to “employees.”

Rationale for Proposed Changes

The proposed amendment to Section 1.96 is intended to correct a typographical error.

II. Proposed Amendments to Chapter 3—Special Provisions

The PUC recognizes that the rules relating to special provisions need to be updated in order to make PUC proceedings operate in a more efficient manner. Therefore, with the aim of increasing efficiency and clarity in

PUC proceedings, we propose the following amendments to the regulations at 52 Pa. Code §§ 3.1—3.602 for the rationales articulated herein.

52 Pa. Code § 3.1. Definitions.

Proposed Changes

“Emergency” would be amended to include clear and present danger to the public interest.

“Emergency Order” would be amended to replace “Director of Operations” with “Executive Director.”

Rationale for Proposed Changes

The proposed amendment to the definition of “emergency” allows the PUC to act in certain circumstances when there is a danger to the public interest, which was not previously specified. The amendment preserves the requirement that a “clear and present danger” must exist prior to any PUC action, and thereby alleviates any concerns regarding an overbroad definition of “emergency.”

The proposed amendment to the definition of “emergency order” reflects the renaming of the Director of Operations to the Executive Director.

52 Pa. Code § 3.2. Petitions for Issuance of Emergency Orders.

Proposed Changes

Section 3.2 would be amended to require, to the extent practicable, service of petitions for emergency orders to be served upon the statutory advocates.

Rationale for Proposed Changes

The proposed amendment to Section 3.2 is intended to ensure that the statutory advocates, namely, the Office of Consumer Advocate, the Office of Small Business Advocate, and the PUC’s Bureau of Investigation and Enforcement, are served with petitions to the PUC seeking the issuance of emergency orders. This requirement would allow the statutory advocates to be kept aware of such petitions and to take appropriate action in response to said petitions at their discretion.

52 Pa. Code § 3.3. Disposition of Ex Parte Emergency Orders.

Proposed Changes

Section 3.3(a)—(d) would be amended to replace “Director of Operations” with “Executive Director.”

Section 3.3(b) and (d) would be amended to allow statutory advocates to receive a copy of an emergency order or the denial of a petition for emergency order.

Rationale for Proposed Changes

The proposed amendments to Section 3.3(a)—(d) reflect the renaming of the Director of Operations to the Executive Director.

The proposed amendments to Section 3.3(b) and (d) are intended to ensure that the statutory advocates, namely, the Office of Consumer Advocate, the Office of Small Business Advocate, and the PUC’s Bureau of Investigation and Enforcement, are served with copy of an emergency order or the denial of a petition for emergency order. This requirement would allow the statutory advocates to be kept aware of such orders and to take appropriate action in response to said orders at their discretion.

52 Pa. Code § 3.4. Hearings Following Issuance of Emergency Orders.

Proposed Changes

Section 3.4(b) would be amended to require the petitioner to serve the statutory advocates and other parties.

Section 3.4(d) would be amended to replace “Director of Operations” with “Executive Director.”

Rationale for Proposed Changes

The proposed amendment to Section 3.4(b) clarifies all the parties that the petitioner is required to serve.

The proposed amendment to Section 3.4(d) reflects the renaming of the Director of Operations to the Executive Director.

52 Pa. Code § 3.6. Petitions for Interim Emergency Orders.

Proposed Changes

Section 3.6 would be amended to require service on statutory advocates.

Rationale for Proposed Changes

The proposed amendment to Section 3.6 is intended to ensure service of a petition for interim emergency order on the statutory advocates, in addition to the existing requirement to file with the Secretary and contemporaneously serve the Chief Administrative Law Judge and the parties.

52 Pa. Code § 3.101. Municipal Contracts.

Proposed Changes

Section 3.101 would be amended to replace “reproduction” with “reproduced.”

Rationale for Proposed Changes

The proposed amendment to Section 3.101 is intended to clarify existing language.

52 Pa. Code § 3.111. Form and Content of Informal Complaints.

Proposed Changes

Section 3.111(b) would be amended to change the PUC’s mailing address and to require informal complaints to comply with Section 3.111(a).

Rationale for Proposed Changes

The proposed amendments to Section 3.111(b) are intended to provide an updated mailing address for the PUC and to clarify that informal complaints should comply with the requirements of Section 3.111(a).

52 Pa. Code § 3.113. Resolution of Informal Investigations.

Proposed Changes

Subsections 3.113(a), (b)(1), and (b)(3) would be amended to state informal investigations terminated by letter will be served on affected parties.

Rationale for Proposed Changes

The proposed amendment to Section 3.113(b)(1) is intended to clarify on whom the PUC will serve letters terminating an informal investigation.

52 Pa. Code § 3.381. Applications for Transportation of Property, Household Goods in Use and Persons.

Proposed Changes

Section 3.381(a)(3) would be amended to change the PUC’s address.

Rationale for Proposed Changes

The proposed amendment to Section 3.381(a)(3) is intended to provide an updated mailing address for the PUC.

*52 Pa. Code § 3.391. Arbitration of Claims for Billing and Collecting Services.**Proposed Changes*

Section 3.391(a) would be amended to reflect the correct statute governing arbitration of a dispute between a water utility and an authority, city, borough or township as to the cost of billing and collecting services.

Rationale for Proposed Changes

The current statutory provision incorporated in Section 3.391 has been repealed. The proposed amendment would reflect the correct statutory provision that now governs when the water utility acts as a billing and collecting agent for a municipal authority, city, borough or township and the PUC is the forum for the arbitration of the dispute that arises between them due to the cost of billing and collecting services.

*52 Pa. Code § 3.551. Official Forms.**Proposed Changes*

Section 3.551 would be amended to change the PUC's address.

Rationale for Proposed Changes

The proposed amendment to Section 3.551 is intended to provide an updated mailing address for the PUC.

III. Proposed Amendments to Chapter 5—Formal Proceedings

The PUC recognizes that the rules governing formal proceedings need to be updated in order to make PUC proceedings operate in a more efficient manner. Therefore, with the aim of increasing efficiency and clarity in formal proceedings, the PUC proposes the following amendments to the regulations at 52 Pa. Code §§ 5.1—5.633 for the rationales articulated herein.

*52 Pa. Code § 5.12. Contents of Applications.**Proposed Changes*

Section 5.12(a) would be amended to direct the applicant to serve the application upon the statutory advocates.

Rationale for Proposed Changes

The proposed amendment to Section 5.12(a) is intended to ensure that the statutory advocates, namely, the Office of Consumer Advocate, the Office of Small Business Advocate, and the PUC's Bureau of Investigation and Enforcement, are served with copies of applications. This requirement will allow the statutory advocates to be kept aware of applications filed with the PUC, and take appropriate action in response to said applications, at their discretion.

*52 Pa. Code § 5.13. Applications for Construction or Alteration of Crossings.**Proposed Changes*

Section 5.13(b) would be amended to remove the phrase "complained against."

Rationale for Proposed Changes

The proposed amendment to Section 5.13(b) is intended to permit abolitions of crossings even when complaints have not been filed.

*52 Pa. Code § 5.14. Applications Requiring Notice.**Proposed Changes*

Section 5.14(a) would be amended to set forth illustrative examples of the applications for authority that must be published, whether in the *Pennsylvania Bulletin* only or as otherwise required by the PUC. This list would duplicate the list of applications mentioned in the existing Section 5.14(d), except for (d)(4—6) and (d)(10), which would be deleted. Applications for initiation of steam utility service, rail service, and common carrier service by motor vehicle (except as provided for in 52 Pa. Code § 3.381(b)) would be added to the newly-created Sections 5.14(a)(1—3). The reference to "fixed utilities" that originally appeared in Section 5.14(d) would be replaced with "utilities" in the newly-created Sections 5.14(a)(1—3).

Section 5.14(d) would be deleted in its entirety.

Rationale for Proposed Changes

Section 5.14(a) currently sets forth the general rule that notice of applications to the PUC for authority under the Code must be published in the *Pennsylvania Bulletin* and as may otherwise be required by the PUC. The proposed amendment to Section 5.14(a) would provide an informational listing of the applications for authority that must be published, which includes not just fixed utilities, but all utility service that is currently regulated by the PUC as defined under 66 Pa.C.S. § 102.

The proposed amendment to Section 5.14(d) would delete it in its entirety as it is no longer necessary.

*52 Pa. Code § 5.21. Formal Complaints Generally.**Proposed Changes*

Section 5.21(c) would be amended to change "Office of Trial Staff" to "Bureau of Investigation and Enforcement" and to allow for a complaint to be served electronically if the respondent is a filing user. It would also provide that the PUC may serve a copy of the complaint by e-mail upon agreement by each party, under 66 Pa.C.S. § 702. Section 5.21(d) would be amended to replace "compliant" with "complaint."

Rationale for Proposed Changes

The proposed amendment to Section 5.21(c) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement and to incorporate the General Assembly's 2019 amendment to 66 Pa.C.S. § 702, which allows for the electronic filing of formal complaints when applicable.

The proposed amendment to Section 5.21(d) is intended to correct a typographical spelling error.

*52 Pa. Code § 5.22. Content of Formal Complaint.**Proposed Changes*

Section 5.22(a)(1)-(2) would be amended to change "telefacsimile" to "fax."

Rationale for Proposed Changes

The proposed amendment to Section 5.22(a)(2) is intended to update existing language.

*52 Pa. Code § 5.24. Satisfaction of Formal Complaints.**Proposed Changes*

Section 5.24(c) would be amended to specify that, in cases involving multiple respondents, a docket will not be marked closed until the filing of certified statements or certificates of satisfaction that resolve all claims against all respondents.

Rationale for Proposed Changes

The proposed amendment to Section 5.24(c) is intended to address the filing of certificates of satisfaction in cases where there are multiple respondents. Section 5.24(c) currently only addresses complaints involving a single respondent. In such cases, the filing of a certificate of satisfaction that is not objected to by the complainant resolves all claims against the respondent and allows the docket to be closed.

However, in complaints where there are multiple respondents, a certificate of satisfaction may or may not resolve the complainant's claims against each and every respondent. Therefore, in cases involving multiple respondents, the filing of a certificate of satisfaction will not automatically trigger closure of the case as long as there are claims that remain outstanding against any of the respondents.

*52 Pa. Code § 5.31. Staff-initiated Complaints.**Proposed Changes*

Section 5.31(b) would be amended to change "Office of Trial Staff" to "Bureau of Investigation and Enforcement."

Rationale for Proposed Changes

The proposed amendment to Section 5.31(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

*52 Pa. Code § 5.41. Petitions Generally.**Proposed Changes*

Section 5.41(a) would be amended to require materially supportive documents to be attached, and, if they are not available for attachment, the petition must set forth the reason for unavailability.

Section 5.41(b) would be amended to change "Office of Trial Staff" to "Bureau of Investigation and Enforcement."

Rationale for Proposed Changes

The proposed amendment to Section 5.41(a) is intended to harmonize the filing requirements for formal complaints, as addressed in Section 5.22(a), and the filing requirements for petitions.

The proposed amendment to Section 5.41(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

*52 Pa. Code § 5.42. Petitions for Declaratory Orders.**Proposed Changes*

Section 5.42(c) would be amended to require copies to be served in accordance with the PUC's direction.

Rationale for Proposed Changes

The proposed amendment to Section 5.42(c) is intended to provide consistency with similar language in Section 5.41(c).

*52 Pa. Code § 5.43. Petitions for Issuance, Amendment, Repeal, or Waiver of Commission Regulations.**Proposed Changes*

Section 5.43(b) would be amended to change "Office of Trial Staff" to "Bureau of Investigation and Enforcement."

Section 5.43(c) would be amended to require copies to be served in accordance with the PUC's direction.

Rationale for Proposed Changes

The proposed amendment to § 5.43(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

The proposed amendment to Section 5.43(c) is intended to provide consistency with similar language in Section 5.41(c).

*52 Pa. Code § 5.52. Content of a Protest to an Application.**Proposed Changes*

Section 5.52(a)(2) would be amended to remove the extraneous space after "protest" and to add a new subsection (4) that would require that a protest to an application must explicitly request a hearing before the Office of Administrative Law Judge or the PUC will not schedule one.

Rationale for Proposed Changes

The proposed amendment to Section 5.52(a) is intended to correct a typographical error and to inform parties that submit protests that if they do not explicitly request a hearing before the Office of Administrative Law Judge the PUC will rule on the pleadings alone without holding evidentiary hearings.

*52 Pa. Code § 5.53. Time of Filing.**Proposed Changes*

Section 5.53 would be amended to provide for a 30-day period from the date of publication in the *Pennsylvania Bulletin* in which to file protests to applications, with modifications to this protest period being granted for good cause shown.

Rationale for Proposed Changes

Various PUC regulations provide for a 60-day period in which to file protests, unless otherwise specified. The 60-day period commences from the date of publication in the *Pennsylvania Bulletin*. See 52 Pa. Code § 5.14(c) (indicating that the time for filing protests to applications is governed by Section 5.53); and 52 Pa. Code § 5.53 (related to Time of filing).

Executive Order 2023-07, building Efficiency in the Commonwealth's Permitting, Licensing, and Certification Processes, which was issued on January 31, 2023, instructs executive agencies to examine the type of permits, licenses, or certifications they issue, which would then be subject to recommended efficient application processing times.⁶ As a best practice, the PUC should also take this opportunity to examine whether the PUC's application processes may be improved while still affording interested parties with notice and an opportunity to be heard.

The proposed amendment to Section 5.53 reduces the default protest period from 60 days to 30 days following publication of an application in the *Pennsylvania Bulletin*. This amendment is intended to follow Executive Order 2023-07 and to make processing times for applications more efficient while still affording interested parties with notice and an opportunity to be heard.

*52 Pa. Code § 5.72. Eligibility to Intervene.**Proposed Changes*

The heading of Section 5.72(a) would be amended to replace "Persons" with "Parties."

⁶ Executive Order 2023-07—Building Efficiency in the Commonwealth's Permitting, Licensing, and Certification Processes. See, https://www.governor.pa.gov/wp-content/uploads/2023/01/20230131_EO-2023-07_FINAL_Executed.pdf

Rationale for Proposed Changes

The proposed amendment in Section 5.72(a) is intended to clarify that Section 5.72(a) addresses persons seeking to intervene in a proceeding as a party.

*52 Pa. Code § 5.74. Filing of Petitions to Intervene.**Proposed Changes*

Section 5.74(b)(3) would be amended to change the timeline for filing petitions to intervene to the time specified in an order or notice, and within 30 days if no time is specified is set in an order or notice with respect to the proceedings.

Rationale for Proposed Changes

Section 5.74(b) of the PUC's regulations allows for the filing of a petition to intervene to occur no later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings but not less than the notice and protest period established under §§ 5.14 and 5.53, absent good cause shown. Therefore, we propose to retain the existing language in the regulation at Section 5.74(b), but amend Section 5.74(b)(3) to note that, absent an order or notice stating otherwise under Sections 5.76(b)(1) or (b)(2), the outer limit for filing a petition to intervene would be aligned with proposed shortened time for filing protests of 30-days from the date of publication in the *Pennsylvania Bulletin*, except upon good cause shown. As proposed in Section 5.14(c), the proposed amendment to Section 5.74(b)(3) is intended to provide consistency with the timeframe for the filing of a protest as set forth in Section 5.53.

*52 Pa. Code § 5.81. Consolidation.**Proposed Changes*

We propose to amend Section 5.81 to incorporate a rule addressing the identification of, and participation by, utility and non-utility indispensable parties when it will result in a better record and comprehensive consideration of the parties, facts, and issues in a proceeding.

Rationale for Proposed Changes

Section 5.81 of the current rules expressly authorizes an Administrative Law Judge (ALJ) or the PUC to consolidate a common question of law or fact. The current rules contain no provision authorizing the ALJ or the PUC to identify an indispensable party and interplead that party. Accordingly, we solicit input on the development of a prospective rule that would address this issue.

*52 Pa. Code § 5.222. Initiation of Prehearing Conferences in Nonrate Proceedings.**Proposed Changes*

Section 5.222 would be amended to allow the presiding officer to address and determine the manner of service on parties in non-rate proceedings.

Rationale for Proposed Changes

The proposed amendment to Section 5.222 is intended to reflect that presiding officers often address service of documents by parties during prehearing conferences, and a party may express a preference as to how they wish to be served during the course of the proceeding. Therefore, it follows that the presiding officer be afforded with the authority to address and determine the method of service on parties.

*52 Pa. Code § 5.224. Prehearing Conference in Rate Proceedings.**Proposed Changes*

Section 5.224 would be amended to allow the presiding officer to address and determine the manner of service on parties in rate proceedings.

Rationale for Proposed Changes

The proposed amendment to Section 5.224 is intended to reflect that presiding officers often address service of documents by parties during prehearing conferences, and a party may express a preference as to how they wish to be served during the course of the proceeding. Therefore, it follows that the presiding officer be afforded with the authority to address and determine the method of service on parties.

*52 Pa. Code § 5.245. Failure to Appear, Proceed or Maintain Order in Proceedings.**Proposed Changes*

Section 5.245 would be amended to prohibit the section from applying to a party who is not required to secure counsel if there is no finding that the party has committed an abuse of process. It would also be amended to prohibit the dismissal of a complaint, petition, or application with prejudice for a procedural failure on the complainant, petitioner, or applicant's behalf.

Rationale for Proposed Changes

The PUC often relies on Sections 316 and 332(f) of the Code, 66 Pa.C.S. §§ 316 and 332(f), respectively, to dismiss proceedings with prejudice when litigants fail to appear. Section 332(f) addresses the failure to be at a scheduled conference or hearing. Section 332(f) holds that the failure to secure counsel and appear precludes that party from participating, seeking a rehearing, or a recall unless it was unavoidable, and the other party is not prejudiced. This general rule and exception seem to be limited to those circumstances where a party is required to have legal counsel before the PUC. This has also been relied on to dismiss unrepresented pro se litigant cases with prejudice when they fail to appear.

Section 316 of the Code also governs prima facie evidence of facts found which are conclusive unless set aside. This provision does not address stare decisis or dismissals with prejudice. This provision creates a presumption that prior facts, such as tariffed rates, are reasonable and precludes collateral attacks upon those facts absent a showing of changed circumstances. *McLaughlin v. DQE*, Docket No. C-20065798 (2009); *Duquesne Light Co. et al. v. Pa. PUC*, 715 A. 2d 540 (Pa. Cmwlth. 1998); *Popowsky v. Pa. PUC*, 669 A. 2d 1029, 1037 n. 14 (Pa. Cmwlth. 1995), rev'd in part on other grounds, 706 A. 2d 1197 (Pa. 1997); *Zucker v. Pa. PUC*, 401 A. 2d 1377, 1380 (Pa. Cmwlth. 1979); *Schellhammer v. Pa. PUC*, 629 A. 2d 189, 193 (Pa. Cmwlth. 1993).

The PUC often relies on Section 316 of the Code and the ancillary res judicata or collateral estoppel. However, Pennsylvania law holds that res judicata should not apply if a matter is dismissed on procedural matters, like a failure to appear, because there has been no substantive determination on the merits. *Scharf v. DeCou Company*, 183 A.41, 41-42 (1936); *Farabiugh Chevrolet v. Covenant Management, Inc.*, 522 A.2d 100, 101 (Pa. Super. 1987); *Gutman v. Giordano*, 557 A.2d 782, 783 (Pa. Super. 1989); *Acobacey v. Acobacey*, 22 Phila. 333, 191 Phila. Cty. Rptr. LEXIS 42 (1991); *Monroeville v. Liberatore*, 736 A.2d 31, 34 (Pa. Cmwlth. 1999). For collateral estoppel to apply,

there must be an identity of parties yet often a matter is raised by separate spouses at different times on very different facts.

Section 5.245 of our rules addresses failure to appear and the circumstances in which failure to be represented at a hearing may constitute a waiver to participate in the hearing. Therefore, it is the appropriate section to clarify when a pro se litigant can be dismissed with prejudice, and whether the application of res judicata and collateral estoppel based upon a litigant's failure to appear at hearing is permissible.

52 Pa. Code § 5.251. Recording of Proceedings.

Proposed Changes

Section 5.251(d) would be amended to include a provision detailing the rules regarding recording during a special agent proceeding.

Rationale for Proposed Changes

The proposed amendment to Section 5.251(d) is intended to clarify what occurs in practice during special agent proceedings.

52 Pa. Code § 5.252. Records of Proceedings.

Proposed Changes

Section 5.252(c) and (d) would be amended to replace "tapes" with "recordings."

Rationale for Proposed Changes

The proposed amendments to Section 5.252(c) and (d) are intended to reflect the change in technology the PUC uses for record proceedings from cassette tape to digital recordings.

52 Pa. Code § 5.304. Interlocutory Review of Discovery Matters.

Proposed Changes

Section 5.304(c) would be amended to replace "Responsive brief" with "Brief."

Section 5.304(i) would be amended to be left justified.

Rationale for Proposed Changes

The proposed amendment to Section 5.304(c) is intended to provide consistency with the language in Section 5.302(b) and to clarify that any party may file a brief in support or opposition to a petition for interlocutory review of a presiding officer's ruling on discovery.

The proposed amendment to Section 5.304(i) is intended to clarify the proper placement of the provision in the statute.

52 Pa. Code § 5.306. Expedited Notification.

Proposed Changes

Section 5.306 would be amended to replace "telefacsimile" with "telefax."

Rationale for Proposed Changes

The proposed amendment to Section 5.306 is intended to update existing language.

52 Pa. Code § 5.323. Hearing Preparation Material.

Proposed Changes

Section 5.323(b) would be amended to change the reference of "photostatic copy" to "copy."

Rationale for Proposed Changes

The proposed amendment to Section 5.323(b) is intended to clarify the reference in the provision and reduce confusion.

52 Pa. Code § 5.331. Sequence and Timing of Discovery.

Proposed Changes

Section 5.331(c) would be amended to add the sentence, "Once a protest or adverse pleading is filed with the PUC, staff data requests are deemed withdrawn."

Rationale for Proposed Changes

The proposed amendment to Section 5.331(c) is intended to clarify that when a protest or adverse pleading is filed with the PUC, the matter would be referred to the Office of Administrative Law Judge for assignment to a presiding officer, and staff data requests would be deemed "withdrawn."

52 Pa. Code § 5.342. Answers or Objections to Written Interrogatories by a Party.

Proposed Changes

Section 5.342(g) would be amended to add "or until such time as the parties may determine by mutual agreement," in reference to the timing of filing a motion to dismiss an objection to interrogatories.

Rationale for Proposed Changes

The proposed amendment to Section 5.342(g) is intended to allow parties to jointly set a timeline for motions to dismiss an objection to compel that was already answered in an interrogatory.

52 Pa. Code § 5.349. Requests for Documents, Entry for Inspection and other Purposes.

Proposed Changes

Section 5.349(b) would be amended to replace "Office of Trial Staff" with "Bureau of Investigation and Enforcement."

Rationale for Proposed Changes

The proposed amendment to Section 5.349(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

52 Pa. Code § 5.351. On the Record Data Requests.

Proposed Changes

Section 5.351(a) would be amended to permit on the record data requests in all PUC proceedings, instead of only in rate cases.

Rationale for Proposed Changes

Section 5.351(a) allows a party to request that a witness provide information or documents at a later time as part of the witness' response to a question posed during cross-examination in the course of a rate proceeding. The proposed amendment to Section 5.351(a) is intended to allow on the record data requests in all PUC proceedings, instead of only in rate cases.

52 Pa. Code § 5.365. Orders to Limit Availability of Proprietary Information.

Proposed Changes

Section 5.365 would be amended to add subsection (h). The new Section 5.365(h) would require that, where parties to formal proceedings have indicated that they have a currently-effective court-granted Protection From Abuse (PFA) order, or other order for the protection of their personal safety, in place, all parties must redact the

PFA holder's address and contact information from any documents filed as part of the formal complaint proceeding.

Rationale for Proposed Changes

The proposed amendment to Section 5.365 is intended to ensure that individuals who have a valid PFA order or similar order from a court are protected from having their personal address and contact information inadvertently disclosed to the public. The formal complaint forms provided by the PUC include a section wherein a complainant may indicate that they have a court-granted PFA order, or other order that demonstrates evidence of domestic violence against them currently in effect for their personal safety or welfare in place, along with instructions to include a copy of said order with the formal complaint form. Parties to the proceeding would be responsible for reviewing the complaint form to ensure whether the complainant has indicated that they have a PFA order or similar order, and correspondingly ensuring that any filings to the proceeding exclude or redact the complainant's personal address and contact information.

52 Pa. Code § 5.408. Official and Judicial Notice of Fact.

Proposed Changes

Section 5.408(c) would be amended to add to the existing regulation that an aggrieved party has the opportunity to present counter evidence prior to the decision of the presiding officer being issued if the decision relies upon the noticed fact.

Rationale for Proposed Changes

The proposed amendment to Section 5.408(c) is intended to allow a party that is adversely affected by a noticed fact to have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed.

52 Pa. Code § 5.409. Copies and Form of Documentary Evidence.

Proposed Changes

Section 5.409(a) would be amended to replace "two copies" of testimony to "one copy" of testimony.

Rationale for Proposed Changes

The proposed amendment to Section 5.409(a) is intended to provide consistency with Chapter 1 of the PUC's regulations.

52 Pa. Code § 5.412. Written testimony.

Proposed Changes

Section 5.412(f) would be amended to delete the requirement to file pre-served testimony according to Section 5.412a, given the proposed repeal of Section 5.412a.

Section 5.412(g) would be amended to replace "two copies" of testimony to "one copy" of testimony and to recognize that written testimony may be admitted via stipulation with no court reporter present.

Rationale for Proposed Changes

The proposed amendment to Section 5.412(f) reflects the proposed repeal of Section 5.412a.

The proposed amendment to Section 5.412(g) is intended to provide consistency with Chapter 1 of the PUC's regulations and to recognize that, on occasion, testimony is admitted via stipulation by the presiding officer when there is no court reporter present.

52 Pa. Code § 5.412a. Electronic Submission of Pre-served Testimony.

Proposed Changes

Section 5.412a would be repealed in its entirety.

Rationale for Proposed Changes

The coexistence of the court reporter's transcript and exhibits and the parties' separate electronic filing of pre-served testimony under Section 5.412a complicates matters when the Secretary's Bureau (SEC) is working with the Law Bureau (LAW) to prepare a certified record for a Commonwealth Court appeal. The existence of the parties' Section 5.412a filings of pre-served testimony in addition to testimony filed by the Court Reporter makes it more difficult for SEC staff to identify which documents should be included in the certified record.

Upon review of current procedures for processing of transcripts, we cannot identify any concrete benefit to stakeholders from continuing to require parties to submit electronic copies of pre-served testimony under 52 Pa. Code § 5.412a. It is apparent that continuation of this requirement is causing SEC staff considerable difficulty in preparing reproduced/certified records when working with LAW on appellate proceedings. As such, repealing Section 5.412a would reduce the administrative burden on SEC staff and aid in timely compliance with appellate deadlines. However, the PUC seeks stakeholder comment regarding how pre-served written testimony that is modified at hearing may be filed in the event that Section 5.412a is repealed.

52 Pa. Code § 5.502. Filing and Service of Briefs.

Proposed Changes

Section 5.502 would be amended to repeal original Section 5.502(c).

Section 5.502(d) would be amended to consolidate the filing requirements for briefs in rate proceedings and non-rate proceedings.

Section 5.502(f) would be amended to remove the non-specified timeline for main briefs and reply briefs; all timelines would be set by the presiding officer.

Rationale for Proposed Changes

The proposed amendments to Section 5.502 are intended to add clarity by removing references to "initial briefs" and "responsive briefs."

52 Pa. Code § 5.531. Certification of Record without Decision.

Proposed Changes

Section 5.531(a) would be amended to replace "file" with "issue."

Rationale for Proposed Changes

The proposed amendment to Section 5.531(a) is intended to clarify that a presiding officer will issue a decision.

52 Pa. Code § 5.533. Procedure to Except to Initial, Tentative and Recommended Decisions.

Proposed Changes

Section 5.533 would be amended to delete all references to "tentative decisions."

Rationale for Proposed Changes

The proposed amendment to Section 5.533 is intended to clarify that the PUC does not have “tentative decisions.” The PUC does have “tentative orders” but not “tentative decisions.”

52 Pa. Code § 5.591. Reports of Compliance.

Proposed Change

Section 5.591(a) would be amended to state that compliance reports will be filed by parties subject to the Commission’s jurisdiction.

Rationale for Proposed Changes

The proposed amendment to Section 5.591(a) is intended to clarify who is responsible for filing compliance reports with the Commission following the amended definition of “person.”

Conclusion

Accordingly, under sections 331, 332, 333, 334, 335, 501, 701, 702, 703 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 331—335, 701—703, 501 and 1501; section 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5 (relating to notice of proposed rulemaking required: adoption of regulations; and approval as to legality); section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)); section 5 of the Regulatory Review Act (71 P.S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234 (relating to fiscal note), we are considering adopting proposed changes to existing regulations and proposed new regulations, at 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01—5.633; *Therefore,*

It Is Ordered:

1. That a proposed rulemaking be opened to consider the proposed amendments to 52 Pa. Code Chapters 1, 3, and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings) set forth in Annex A.

2. That a copy of this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, shall be posted on the Public Utility Commission’s website at Docket No. L-2012-2317273.

3. That the Secretary shall serve this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, upon the Office of Consumer Advocate, the Office of Small Business Advocate, the PUC’s Bureau of Investigation and Enforcement, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Energy Association of Pennsylvania, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, AARP Pennsylvania, the Pennsylvania Telephone Association, the Broadband Communications Association of Pennsylvania, the PUC’s Consumer Advisory Council, and all jurisdictional fixed public utilities.

4. That the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, together with an appropriate rulemaking packet, to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.

5. That after receiving approvals from the Office of the Attorney General and Governor’s Budget Office, the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, together with an appropriate rulemaking packet, for review and comment to the majority and minority chairs of the Senate Committee on Consumer Protection and Professional Licensure and to the majority and minority chairs of the House Consumer Protection, Technology, and Utilities Committee. On the same day, the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, together with an appropriate rulemaking packet, to the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*. Also on the same day, the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, together with an appropriate rulemaking packet, to the Independent Regulatory Review Commission with proof of the other deliveries.

6. That interested persons may file written comments to this Notice of Proposed Rulemaking, consisting of a Preamble and an Annex A, as published in the *Pennsylvania Bulletin*, during the 60-day period following publication in the *Pennsylvania Bulletin*. The 60 days constitute the Public Comment Period. Comments filed during the Public Comment Period will be posted to the Public Utility Commission’s website and forwarded by the Public Utility Commission to the majority and minority chairs of the Senate Committee on Consumer Protection and Professional Licensure and the House Consumer Protection, Technology, and Utilities Committee and to the Independent Regulatory Review Commission.

7. That comments regarding this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, may be filed electronically through the Public Utility Commission’s e-filing system,⁷ in which case no paper copy needs to be filed with the Secretary of the Public Utility Commission provided that the filing is less than 250 pages.⁸ If you do not efile, then you are required to mail, preferable by overnight delivery, one original filing, signed and dated, with the PUC’s Secretary at: Pennsylvania Public Utility Commission, Commonwealth Keystone Building 2nd Floor, 400 North Street, Harrisburg, PA 17120. Comments must reference Docket No. L-2023-3041347. All pages of filed comments, with the exception of a cover letter, must be numbered.

8. That comments filed prior to publication of the *Notice of Proposed Rulemaking* in the *Pennsylvania Bulletin* will be considered untimely filed and may be rejected by the Pennsylvania Public Utility Commission.

9. That the contact persons for this proceeding are Tiffany L. Tran, Esq., Law Bureau, 717-783-5413, tiftran@pa.gov; Colin W. Scott, Esq., Law Bureau, 717-783-5949, colin.scott@pa.gov; and Karen Thorne, Regulatory Review Assistant, Law Bureau, kathorne@pa.gov.

10. That an electronic copy, in WORD® or WORD®-compatible format, of all filed submissions, comments for filings at the docket must be emailed to the contact persons and to ra-pcprgreview@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 22, 2024

⁷ <https://www.puc.pa.gov/efiling/default.aspx>.

⁸ Any persons submitting a filing of 250 pages or more must mail one copy the Secretary of the Commission.

Statement of Vice Chair Kimberly Barrow

Today we vote to initiate a notice of proposed rulemaking process to revise our rules of practice and procedure. In addition to those changes that the Commission proposes and would seek comment on, I also would like to hear from parties as to whether our regulations' stated preference for settlements is appropriate in all circumstances.

Section 5.231(a) of our current rules states that it "is the policy of the Commonwealth to encourage settlements." Uniformly, settlements have been encouraged because they avoid the time and expense associated with litigation. Although litigation costs are a legitimate factor when considering settlements, there may be proceedings in which the public interest would be better served by a full evidentiary hearing. Moreover, the stated policy in Section 5.231(a) may serve to discourage parties from proceeding to litigation out of a perception that the Commission looks with disfavor on litigated proceedings. In your comments to the proposed rulemaking, please do include comments and evidence on the benefits and burdens created by the settlement policy and under what circumstances the Commission might seek a full public hearing for purposes of transparency.

November 9, 2023

KIMBERLY BARROW,
Vice Chairperson

Statement of Commissioner Kathryn L. Zerfuss

Over 17 years have passed since the Commission last revised the general provisions governing practice before the PUC. During that time, our jurisdictional responsibilities have changed considerably and the nature of administrative practice and procedure has evolved and matured. The Notice of Proposed Rulemaking (NOPR) we are considering today recognizes that important technological innovations and advancements have occurred since 2006 and proposes updates to bring efficiencies to the current procedures employed in PUC administrative hearings and proceedings.

We should always endeavor to improve efficiencies in our administrative hearing process and the NOPR takes significant steps in that direction. I am pleased that the motion before us today includes more substantive considerations. These include proposals to modernize our regulations to meet the realities and circumstances faced by the parties, particularly pro se complainants who appear on their own behalf, as well as small businesses navigating our administrative hearing process. I wholeheartedly support these critical considerations and welcome the comments and policy debates they will generate.

I emphasize the current proposal to permit "an individual consumer to be represented by an individual who holds a power of attorney over an individual during periods of disability and incapacity." The proposal within the motion is a good starting point, but in my view, it falls short of necessary reforms to individual representation, similar to procedures utilized by several other administrative agencies. By authorizing additional representation options for individuals, we may better facilitate the development of evidentiary records in complaint proceedings involving individual consumers. However, I am not prejudging the outcome and welcome a robust discussion. Undoubtedly, inclusion of this issue in the NOPR makes this one of the more consequential rulemakings in some time that is directly aimed at helping consumers.

I encourage all vested partners—including those organizations representing vulnerable populations such as legal services organizations, law school/pro bono clinics, and organizations representing seniors—to weigh in on this issue. It would be beneficial to hear from experienced paralegals, social workers, and other professionals (who already represent low income individuals in public benefits, unemployment, and other administrative hearings) about this proposal or other similar proposals which could better inform this NOPR on how to accomplish effective representation for individuals in Commission hearings and proceedings.

November 9, 2023

KATHRYN L. ZERFUSS,
Commissioner

Statement of Commissioner John F. Coleman, Jr.

Before the Commission for disposition is the Commission's Notice of Proposed Rulemaking (NOPR) seeking comments on proposed amendments to update and clarify the Commission's procedural regulations at 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01—5.633. By way of background, the Commission's general provisions for practice before the Commission were last modified in 2006. In preparation for this NOPR, the Commission convened a series of meetings between Commission staff and attorneys who practice before the Commission in 2016. The recommendation prepared by staff is the result of lengthy efforts to obtain input and balance the interests of all parties. I thank those who participated in this process. I would have supported beginning the rulemaking through the adoption of the proposed Order that is now before us.

However, I do not support the Motion that has been offered to modify the proposed Order. My objections to the Motion are both to the process and the substance of some of the changes. First, regarding the process, the Motion proposes a number of far reaching, substantive changes that were not the subject of the Commission's prior efforts to obtain input from stakeholders and build consensus. I think a better approach would have been to share these changes with stakeholders through an Advanced Notice of Proposed Rulemaking. Additionally, in some cases the Motion does not identify the specific, alternative regulatory language that is to be used in the Annex that will be served on the Office of Attorney General, the Governor's Budget Office, and the public. It is the Commission's usual practice in NOPRs to vote on specific, regulatory language, whether from a staff recommendation or a Motion. Given that it is unclear what the Commission is voting to do for some of the changes, I am not certain that this approach satisfies Pennsylvania's Open Meeting Law.⁹

Turning to the substance of the Motion, I will explain my objections to some of the substantive changes, using the criteria in Section 5.2 of the Regulatory Review Act.¹⁰

1. *Dismissals With Prejudice, Section 332(f): Statutory Authority, Economic Impact, Clarity*

The Pennsylvania General Assembly adopted Section 332(f) of the Public Utility Code (Code) to ensure judicial economy and provide for finality of proceedings. The Commission's existing regulations at Section 5.245(a)—(c) follow the statutory language and enjoy the presumption of reasonableness. The dismissal of a case, "with prejudice," for the failure to appear at a hearing gives full

⁹ 65 Pa.C.S. §§ 701—716.

¹⁰ 71 P.S. § 745.5a. Among other things, the Section 5.2 criteria requires us to show the following in support of a proposed regulation: the legal authority, need, and financial/economic impact.

effect to all the words of this subsection.¹¹ Such dismissals are mandated by the plain language of the statute, and are not a policy decision of the Commission:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, *shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination.*

66 Pa.C.S. § 332(f) (emphasis added). In my view, the proposed rule is contrary to the plain language of Section 332(f) of the Code. The word “shall” carries an imperative or mandatory meaning, and was used twice by the General Assembly as a clear direction to the Commission.¹² The plain language of the statute provides the best indication of legislative intent regarding the consequences of failing to appear at a scheduled hearing.¹³ The statute does allow the Commission to permit a party to reopen the proceeding if nonappearance was “unavoidable” and the interests of other parties are not prejudiced. Words and phrases of a statute are to be construed according to their ordinary and plain meaning, and there is no basis in the language of the statute or law to eliminate the requirement of a finding that nonappearance was “unavoidable” and replace it with an “abuse of process” standard. The proposed rule is also contrary to Commonwealth Court precedent recognizing that the dismissal of cases for failure to appear at an agency hearing does not violate due process.¹⁴

The obligation to abide by Section 332(f) clearly applies both to attorneys and parties. The section heading is “Actions of parties and counsel.”¹⁵ The language clearly penalizes a “party” complainant who is representing themselves who fails to appear by prohibiting them from later reopening the proceeding. With attorneys, the language permits the Commission to bar them from appearing before the Commission in any future proceedings for obstructive conduct. In either case, the obligation is the same; either party complainants representing themselves or their attorneys are obligated by Code Section 332(f) to appear for a scheduled hearing or to explain why the nonappearance was unavoidable.

Allowing parties to later reopen proceedings they failed to prosecute will result in increased legal costs for public utilities which will be paid for by other ratepayers. No alternative regulatory language has been proposed for review.

2. *Need: Res judicata/Collateral Estoppel interplay with dismissal with prejudice: Need, Clarity*

The Motion proposes to prohibit the application of res judicata and collateral estoppel to dismiss a complaint brought on the same allegations as a complaint that was previously dismissed for failure to appear at the scheduled hearing. I do not disagree that res judicata/collateral

estoppel should not be used to dismiss such a complaint. One of the required elements of res judicata is that the case acting as a bar must have been a final judgment,¹⁶ and it is at least debatable as to whether a decision to dismiss a complaint with prejudice when the complainant fails to appear is a “final judgment” for purposes of res judicata.¹⁷ In my view, however, this prohibition would be an unnecessary addition to our regulations because an existing Code provision already addresses how to handle a complaint brought on the same allegations as a complaint that was previously dismissed for failure to appear. Namely, this type of case can be dismissed under Section 316 of the Code, which gives conclusive effect to a final Commission order not appealed that dismisses a complaint with prejudice for failure to appear at hearing.¹⁸ Therefore, I do not agree with the Motion that Section 316 of the Code does not address dismissals with prejudice. No specific regulatory language has been proposed for consideration in this Motion.

3. *Representation of Corporations and Partnerships and Representation of Individuals. Clarity/Statutory Authority.*

The Motion proposes to revise our procedural rules to permit small business corporations or partnerships to appear through an authorized corporate official. The Motion also proposes to revise the rules to permit an individual consumer to be represented by an authorized representative who is not an attorney. I oppose these proposed revisions because I am concerned that they would allow for the unauthorized practice of law before the Commission. I note that the Motion cites to the practice before other forums and state agencies as support for the proposed revisions. However, without more details about the nature of the proceedings before these other forums and state agencies, I am not comfortable concluding that the proposed revisions are lawful. Unlike the examples cited, the Commission is neither part of Pennsylvania’s unified judicial system nor an executive agency. The Motion provides no analysis or comparison of the enabling legislation, regulations or rules of court for these other forums with the respective rules or case precedent that applies to the Commission. In my view, these are the types of changes that should have been vetted with stakeholders first through an Advanced Notice of Proposed Rulemaking. No specific regulatory language has been proposed in this Motion on this issue.

4. *Extensions of time and continuances: Need/clarity*

The Commission’s administrative law judges already have the discretion to liberally construe our procedural rules and accept requests for continuance received less than five days prior to the hearing date, and grant such requests on a regular basis. Section 1.2 of our regulations permit the ALJs to waive any defect of procedure “to secure the just, speedy and inexpensive” determination in every type of proceeding.¹⁹ Liberal construction is to apply with particularity for cases involve pro se liti-

¹⁶ *McNeil v. Owens-Corning Fiberglas Corp.*, 545 Pa. 209, 213, 680 A.2d 1145, 1147-48 (1996).

¹⁷ See *Howell v. Philadelphia Gas Works*, Docket No. C-2016-2568426, (Opinion and Order entered May 2, 2017).

¹⁸ 66 Pa.C.S. § 316. Section 316 of the Code provides, in pertinent part, that: “Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.” I concede that Section 316 of the Code governs prima facie evidence of facts found which are conclusive unless set aside and creates a presumption that prior facts are reasonable. However, that is not all that Section 316 does. Section 316 of the Code also gives conclusive effect to a final Commission order that is not appealed and in doing so, precludes a collateral attack of such order. Thus, regardless of whether res judicata/collateral estoppel applies, a complainant is barred by Code Section 316 from relitigating issues raised in a prior complaint that was dismissed with prejudice for failure to prosecute and meet the burden of proof.

¹⁹ 52 Pa. Code § 1.2(a).

¹¹ 1 Pa.C.S. § 1921(a).

¹² In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election, 577 Pa. 231 (2004). “This Court has repeatedly recognized the unambiguous meaning of the word in most contexts.” 577 Pa. at 245.

¹³ *Miller v. County of Centre*, 643 Pa. 560 (2017).

¹⁴ “[D]ismissal of a proceeding for a party’s failure to prosecute or failure to appear at a hearing without good cause does not violate due process.” *Fountain Capital Fund, Inc. v. Pennsylvania Securities Commission*, 948 A.2d 208, 214 (Pa. Cmwlth. 2008).

¹⁵ Section headings may be used in aid of construction. 1 Pa.C.S. § 1924.

gants.²⁰ The revision to Section 1.15 is unnecessary and would appear to create a standard different than found at Section 1.2(a).

Having identified these specific concerns, I do not agree with modifying the proposed Order to include the changes from the Motion.

November 9, 2023

JOHN F. COLEMAN, Jr.,
Commissioner

Statement of Vice Chair Kimberly Barrow

On November 9, 2023, the Commission initiated a notice of proposed rulemaking process to revise our rules of practice and procedure and I offered a statement at that public meeting. Consistent with that statement, with this clarification order, I also would like to hear from parties as to whether our regulations’ stated preference for settlements is appropriate in all circumstances.

Section 5.231(a) of our current rules states that it “is the policy of the Commonwealth to encourage settlements.” Uniformly, settlements have been encouraged because they avoid the time and expense associated with litigation. Although litigation costs are a legitimate factor when considering settlements, there may be proceedings in which the public interest would be better served by a full evidentiary hearing. Moreover, the stated policy in Section 5.231(a) may serve to discourage parties from proceeding to litigation out of a perception that the Commission looks with disfavor on litigated proceedings. In your comments to the proposed rulemaking, please do include comments and evidence on the benefits and burdens created by the settlement policy and explain under what circumstances the Commission might seek a full public hearing for purposes of transparency.

August 22, 2024

KIMBERLY BARROW,
Vice Chairperson

Statement of Commissioner Kathryn L. Zerfuss

Over 18 years have passed since the Commission last revised the general provisions governing practice before the PUC. Since then, our jurisdictional responsibilities have changed considerably and the nature of administrative practice and procedure has evolved and matured. The Clarified Notice of Proposed Rulemaking (NOPR) we are considering today recognizes that important technological innovations and advancements have occurred since 2006 and proposes updates to bring efficiencies to the current procedures in PUC administrative hearings and proceedings.

We should always endeavor to improve efficiencies in our administrative hearing process and the NOPR takes significant steps in that direction including many substantive considerations. These include proposals to modernize our regulations to meet the realities and circumstances faced by the parties, particularly pro se complainants who appear on their own behalf, as well as small businesses navigating our administrative hearing process. I wholeheartedly support these critical policy considerations and welcome the comments and policy debates they will generate.

I emphasize the current proposal to permit “an individual consumer to be represented by an individual who holds a power of attorney over an individual during periods of disability and incapacity.” The proposal is a good starting point, but in my view it falls short of

necessary reforms to individual representation, similar to procedures utilized by several other administrative agencies. By authorizing additional representation options for individuals, we may better facilitate the development of evidentiary records in complaint proceedings involving individual consumers. However, I am not prejudging the outcome and welcome a robust discussion. Undoubtedly, inclusion of this issue in the NOPR makes this one of the more consequential rulemakings in a generation that is directly aimed at helping consumers.

I encourage all vested partners—including those organizations representing vulnerable populations such as legal services organizations, law school/pro bono clinics, and organizations representing seniors—to weigh in on this issue. It would be beneficial to hear from experienced paralegals, social workers, and other professionals (who already represent income-eligible individuals in public benefits, unemployment, and other administrative hearings) about this proposal or other similar proposals which could better inform this NOPR on how to accomplish effective representation for individuals in Commission hearings and proceedings.

August 22, 2024

KATHRYN L. ZERFUSS,
Commissioner

Statement of Commissioner John F. Coleman, Jr.

On November 9, 2023, the Commission considered a recommendation to issue a Notice of Proposed Rulemaking regarding its procedural regulations. I voted to dissent from a Motion that modified the proposed rulemaking order. The order was subsequently tolled by the Office of Attorney General. We now consider a clarified notice of proposed rulemaking that includes changes to the proposed revisions to our regulations. These clarifications resolve some of the reasons for my dissent. However, the proposed order does retain certain substantive modifications that, in my view, fail to satisfy the Regulatory Review Act’s criteria for statutory authority, necessity and clarity. These modifications include proposed changes to our interpretations of Sections 316 and 332 of the Public Utility Code, and our rules regarding legal representation in Commission proceedings.²¹ Therefore, I will be voting no on the proposed order.

August 22, 2024

JOHN F. COLEMAN, Jr.,
Commissioner

Fiscal Note: 57-341. No fiscal impact; recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart A. GENERAL PROVISIONS
CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE
Subchapter A. GENERAL PROVISIONS

§ 1.3. Information and special instructions.

(a) Information as to procedures under this subpart, and instructions supplementing this subpart in special instances, will be furnished upon [**application**] **request** to:

* * * * *

²⁰ 52 Pa. Code § 1.2(d).

²¹ Please see my dissenting statement at this docket entered on November 9, 2023.

(2) In person or by **[mail other than first-class] overnight delivery, certified mail or priority mail:**

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

* * * * *

§ 1.4. Filing generally.

(a) Submittals, pleadings and other documents filed with the Commission should be submitted in one of the following manners:

* * * * *

(2) In person or by **[mail other than first-class] overnight delivery, certified mail or priority mail:**

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

* * * * *

§ 1.5. Amendment to rules.

(a) **[Persons may file an] An** application under §§ 5.1 and 5.11 (relating to pleadings allowed; and applications generally) requesting a general and permanent change in this subpart **is permitted.**

* * * * *

§ 1.6. Commission office hours.

Unless otherwise directed by the Governor **or the Commission**, the Commission offices will be open from 8 a.m. until 4:30 p.m. on business days except Saturdays, Sundays and legal holidays.

§ 1.7. Sessions of the Commission.

Public meetings of the Commission ordinarily will be held in its offices in the Commonwealth Keystone Building, Harrisburg, **or will be livestreamed or held over telephone.** Schedules for public meetings can be obtained from the Commission Secretary or viewed on the Commission's **[website] web site.**

§ 1.8. Definitions.

(a) Subject to additional definitions contained in subsequent sections which are applicable to specific chapters or subchapters, the following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

Act—66 Pa.C.S. §§ 101—[3315] **3316** (relating to **[the]** Public Utility Code).

Adjudication—An order, decree, decision, determination or ruling by the Commission affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of **[the parties to the proceeding in which the adjudication is made] a party with the opportunity for protest, answer, complaint or other opposition pleading.**

[Applicants—In proceedings involving applications for] Applicant—A party seeking permission or authorization **[which] from** the Commission **[may give]** under **the Commission's** statutory or **[other authority delegated to it, the parties on whose behalf the applications are made] delegated authority.**

Adversarial proceeding—A proceeding initiated **[by a person]** to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more **[other persons] parties** and which will be decided on the basis of a formal record.

Authorized agent—A **[person] representative of a filing user** with permission to **[legally act] submit filings** on behalf of the filing user.

Certified legal intern—A law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns and law students).

Confirmation of receipt—A notification generated by the electronic filing system upon receipt of a filing.

Corporation—As defined in 66 Pa.C.S. § 102 (relating to definitions).

Electronic filing or filed electronically—Filing by means of the Commission's electronic filing system.

* * * * *

Electronic mail—**[A means of dispatching] The electronic transmittal or [receiving] receipt of a** submittal in **[relation to]** a Commission matter **[through electronic means].**

Fax transmittal—A telephonic means of transmitting or receiving a submittal in a Commission matter that prints a hard copy facsimile of the submittal in a legible form at the recipient's telefax machine.

Filing user—A person **[who has], corporation or municipal corporation** registered to use the electronic filing system in accordance with the registration instructions available on the Commission's web site at **[http://www.puc.state.pa.us/] http://www.puc.pa.gov/** and who has obtained a **filing** user ID and password.

* * * * *

Initial decision—A decision by a presiding officer **[which] that** becomes final unless timely exceptions are filed by a **[participant] party**, the Commission requests review upon its own motion, or as otherwise established by the **[act] Act.**

Intervenor—A person, **corporation or municipal corporation** intervening or petitioning to intervene as a party as provided by §§ 5.71—5.76 (relating to intervention).

* * * * *

Mediator—An individual designated to conduct a mediation.

Municipal corporation—As defined in 66 Pa.C.S. § 102.

Nonadversarial proceeding—A proceeding **[initiated by a person which] that** is not contested or a proceeding initiated by the Commission or **[at the request of a person] upon request to the Commission** to develop

regulations, policies, procedures, technical rules or interpretations of law.

* * * * *

Party—A person, corporation or municipal corporation who appears in a proceeding before the Commission.

Person—[Except as otherwise provided in this subpart or in the act, the term includes individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions] As defined in 66 Pa.C.S. § 102.

[*Petitioners—Persons*] *Petitioner*—A person, corporation or municipal corporation seeking relief [not otherwise designated in this section] or other action from the Commission under the Commission's statutory or delegated authority.

* * * * *

Presiding officer—A [person] Commission employee designated by the Commission to preside over a matter.

Principal—[A party with] An individual within a partnership, association, corporation or municipal corporation that has the requisite power to authorize [its] or direct counsel for the partnership, association, corporation or municipal corporation to enter into stipulations or settlement agreements on behalf of the corporation or municipal corporation.

* * * * *

[*Protestants—Persons*] *Protestant*—A party objecting on the ground of private or public interest to the approval of an application or other matter which the Commission may have under consideration.

Qualified document—[A document that is listed in the categories of documents that are permitted to be filed electronically] A document authorized for filing with the Commission's electronic filing system in accordance with the instructions on the Commission's web site at [http://www.puc.state.pa.us/] http://www.puc.pa.gov/ and that complies with the filing requirements and restrictions in [§ 1.32(b) () this Chapter relating to filing specifications[]].

Rate proceeding—An [on the record] on-the-record proceeding brought by or before the Commission, the purpose of which is to determine the justness and reasonableness of a proposed or present rate for utility service, including, but not limited to, proceedings initiated under [sections 1307, 1308, 1310 and 1312] Chapter 13 of the [act] Act.

Recommended decision—[An opinion and order submitted for the approval of the Commission by the presiding officer] A decision authored by a presiding officer that requires Commission approval to become effective.

[*Respondents—Persons*] *Respondent*—A party subject to [a statute or other delegated authority administered by the Commission,] Commission jurisdiction who [are] is required to respond to an order

or notice issued or served by the Commission [instituting a proceeding or investigation on its own initiative or otherwise].

Secretary—The Secretary of the Commission [, who is the Commission officer with whom pleadings and other documents are filed and by whom official records are kept].

Staff—The Commission's [Office of Trial Staff] Bureau of Investigation and Enforcement prosecutor or Law Bureau staff counsel [and] or other Commission employees participating in a proceeding before the agency.

Statutory advocate—[The Office of Trial Staff, the] The Office of Consumer Advocate [and the], Office of Small Business Advocate and the Commission's Bureau of Investigation and Enforcement.

Submittal—An application, amendment, exhibit or similar document [involving matters filed in an adversarial or nonadversarial] that complies with the filing requirements and restrictions in this chapter and involves matters filed or served in a Commission proceeding.

[*Telefacsimile transmittal*—A means of dispatching or receiving a submittal in a Commission matter through electronic means that prints a hard copy facsimile of a document in a legible form at the recipient's machine.]

Tentative [decision] order—An order of the Commission [which becomes final unless exceptions are filed by a party within the time period specified by statute or as set forth in] that may become final without further action by the Commission and to which a party may file comments within the time specified by the order.

Trade secret—A private formula, pattern, device, cost study or compilation of information [which is] used in [a] business [and] which, if disclosed, would provide [the] opportunity [to obtain an] for competitive advantage [over competitors who] or economic harm to entities that, but for disclosure, do not know or use it.

* * * * *

Writing or written—Applies to documents [filed] whether in [paper form and documents filed electronically] hard copy or media.

* * * * *

Subchapter B. TIME

§ 1.13. Issuance of Commission orders.

(a) In computing a period of time involving the date of the issuance of [an order by the Commission] a Commission order, the day of issuance [of an order] will be the date the Secretary enters the order. An order will not be made public prior to its entry except where, in the Commission's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Commission. The Secretary will clearly indicate on each order the date of its adoption by the Commission and the date of its entry.

(b) At the time a decision of a presiding officer becomes effective as an adjudication of the Commission in the absence of Commission review as provided for in section

332(h) of the [act] **Act** (relating to procedures in general), the Secretary will issue and serve upon the parties of record an appropriate notice of the date the adjudication became effective as a Commission order.

(c) The date of entry of an order [which is] subject to review by Commonwealth Court is governed by Pa.R.A.P. No. 108. The date of issuance of any other order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Commission action.

* * * * *

§ 1.15. Extensions of time and continuances.

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this title or by order **or notice** of the Commission, [**or notice given thereunder,**] an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized [**person**] **Commission employee**, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

* * * * *

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown will requests for continuance be considered. The requests for a continuance should be filed at least 5 days prior to the hearing date **to the extent possible.**

* * * * *

§ 1.16. Issuance of decisions by presiding officers.

* * * * *

(b) [**The Secretary will mail a decision to parties who are not filing users or have not agreed to receive electronic service. The decision will be deposited in the United States mail on the same date that the decision is posted on the Commission's electronic filing system. The date of the issuance will be clearly indicated on each paper copy of the decision that is mailed to parties.**] **The Secretary will mail a copy of the decision as prescribed in § 703(e) of the Act (relating to fixing of hearings).**

(c) Parties who are filing users and have agreed to receive electronic service **also** will be notified electronically that the decision has been posted on the Commission's electronic filing system and provided with a link to the decision.

Subchapter C. REPRESENTATION BEFORE THE COMMISSION

§ 1.21. Appearance in nonadversarial or informal proceedings.

(a) Individuals may represent themselves **in a nonadversarial Commission proceeding or an informal Commission proceeding.**

(b) [**Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorney or legal intern). For purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding**] [**Reserved**].

(c) In nonadversarial proceedings, [**persons**] **a party** may be represented in the following manner:

- (1) A partner may represent the partnership.
- (2) A bona fide officer of a corporation, trust or association may represent the corporation, trust or association.
- (3) An officer or employee of an agency, political subdivision or government entity may represent the agency, political subdivision or government entity.

(4) A non-attorney third-party representative holding the power of attorney of an individual consumer may represent that individual during periods of disability or incapacity, or both.

(d) In informal proceedings brought under Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service) and Chapter 14 of the [act] **Act** (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service), parties may be represented by one of the following:

* * * * *

§ 1.22. Appearance [by attorney or certified legal intern] in adversarial Commission proceedings.

(a) [**Subject to § 1.21(a) (relating to appearance), an attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings**] **Individuals may represent themselves in an adversarial Commission proceeding. A non-attorney third-party representative holding the power of attorney of an individual consumer may represent that individual during periods of disability or incapacity, or both. An authorized corporate official may represent a small business or partnership in an adversarial Commission proceeding.**

(b) [**An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules**] **Except as provided in subsection (a), persons, corporations and municipal corporations shall be represented by an attorney at law admitted to practice before the Supreme Court of Pennsylvania or by a certified legal intern in adversarial Commission proceedings. For purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the Act (relating to sliding**

scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial Commission proceeding.

(c) [A law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns)] Subsection (b) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney). An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.

* * * * *

§ 1.23. Other representation prohibited at hearings.

(a) [Persons] Parties may not be represented at a hearing before the Commission or a presiding officer except as stated in § 1.21 or § 1.22 (relating to appearance in nonadversarial or informal proceedings; and appearance [by attorney or certified legal intern] in adversarial Commission proceedings).

* * * * *

§ 1.24. Notice of appearance or withdrawal.

(a) *Individuals.* An individual appearing without legal representation before the Commission or a presiding officer shall file with the Secretary [an] a mailing address for service of a notice or other written [communication] communications unless the individual is an eFiling user or has agreed to electronic service of documents. A change in the individual's mailing address which occurs during the course of the proceeding [shall] must be reported to the Secretary promptly.

(b) *Attorneys.*

* * * * *

(2) *Appearance in all other instances.* An attorney shall file with the Secretary a written notice of appearance.

(i) *Content of notice.* Initial pleadings, entries of appearance and notices of withdrawal must include:

(A) The attorney's name, mailing address [and] or electronic mailing address, if [available] a filing user.

(B) Pennsylvania attorney identification number or, if [not licensed in this Commonwealth] appearing pro hac vice, identification of the jurisdiction or jurisdictions in which the attorney is licensed to practice law.

* * * * *

(D) The name and address of the [person] party represented.

(ii) *Filing.*

(A) *Appearance.* The attorney must serve the notice of appearance [shall be served] on the parties to the proceeding, and a certificate of service shall be filed with the Secretary.

* * * * *

(3) *Withdrawal.* An attorney may withdraw an appearance by filing a written notice of withdrawal with the Secretary [. The notice shall be served] and serving the notice on the parties and on the presiding officer [,] if one has been designated.

* * * * *

§ 1.27. Suspension and disbarment.

(a) The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to [a person] an individual who is found by the Commission, after notice and opportunity for hearing in the matter, to have done one or more of the following:

* * * * *

Subchapter D. DOCUMENTARY FILINGS

§ 1.31. Requirements for documentary filings.

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(c) *Identifying information.* Documents filed with the Commission in a proceeding must clearly contain the following information:

* * * * *

(3) Within the title of the document, the name of the [person] party on whose behalf the filing is made. If more than one [person] party is involved, only a single name is necessary.

* * * * *

§ 1.32. Filing specifications.

(a) *Paper filings.* A paper filing made with the Commission must be:

(1) *Typewritten.* Pleadings, submittals or other documents filed in proceedings, if not printed, must be typewritten on paper cut or folded to letter size, 8 to 8 1/2 inches wide by 10 1/2 to 11 inches long, with [left-hand margin at least 1 inch wide and other margins] all margins at least 1 inch. The impression must be [on only one side of the paper] one sided, unless [there are] more than four pages, and shall be double spaced, except that quotations in excess of a few lines shall be single spaced and indented on both the left and right margins. Reproduced copies shall be accepted as typewritten [,] if [copies are] clearly legible.

(2) *Printed.* Printed documents must be at least [10-point type] 12-point font with 10-point font allowed for footnotes on unglazed paper, cut or folded so as not to exceed 8 1/2 inches wide by 11 inches long, with [inside margin] all margins at least 1 inch wide, and with [double-led text and single-led, indented quotations] double-spaced text except that quotations in excess of a few lines shall be single spaced and indented on both the left and right margins.

* * * * *

(b) *Electronic filings.*

* * * * *

(2) *Requirements.* An electronic filing made with the Commission must:

(i) Comply with the paper filing requirements in subsection (a) regarding margins, spacing and type size.

(ii) Be a qualified document [that is] listed in the categories of documents [that the Commission, after notice and opportunity to be heard, has designated as being permitted to be filed electronically] the Commission has designated as permissible electronic filings.

(iii) Be in PDF format so that the document, and when feasible, its attachments, shall be capable of being printed and copied without restriction, and may not require a password to view the contents.

(iv) Be filed in accordance with the instructions made available on the Commission's web site at [<http://www.puc.state.pa.us/>] <http://www.puc.pa.gov/>.

(v) Be filed and served as a searchable PDF. Additionally, filings must be provided to Commission staff in Microsoft-compatible format when that is feasible.

(3) *Size restriction.* A filing, including attachments, that exceeds 10 megabytes may not be filed electronically.

* * * * *

§ 1.33. Incorporation by reference.

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(b) Documents on file with the Commission for more than 20 years may not be incorporated by reference in a current document unless the [**person filing the current document first ascertains that the earlier**] document continues to be readily available in the active records of the Commission.

§ 1.35. Execution.

* * * * *

(b) *Signatory.*

(1) A pleading, submittal or other document filed with the Commission must be signed by one of the following:

(i) The [**person**] **individual** filing the documents, and severally if there is more than one [**person**] **individual** so filing.

* * * * *

(c) *Effect.*

* * * * *

(2) If a document is signed in violation of this subsection, the presiding officer or the Commission, upon motion or upon its own initiative, may impose upon the individual who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 3301 of the [**act**] **Act** (relating to civil penalties for violations).

* * * * *

§ 1.36. Verification.

(a) Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). When a verification is filed electronically, the verification shall be executed by a filing user, or if the verification is signed by an individual who is not a filing user, a filing user may file the verification electronically by scanning the original verification and submitting it as an attachment to a filing. [**When a verification is signed by an individual who is not a filing user, the original verification shall be filed in paper form no later than 3 business days after the electronic filing is made. The filing date for the verification in paper form will be determined in accordance with § 1.11(a)(1)–(3) (relating to date of filing).**] The docket number for the filing must be clearly indicated on the original verification. When verification is permitted, notarization is not necessary. **When a party files a**

petition with the Secretary's Bureau and that petition contains no averment or denial of fact not appearing of record in the underlying action, the petitioner must include a cover letter with a statement to that effect so that the Secretary's Bureau staff is aware that the filer has intentionally excluded a verification.

* * * * *

§ 1.37. Number of copies.

(a) *Paper filings.* When a pleading, submittal or document other than correspondence is submitted in hard copy, an original and the cover letter shall be furnished to the Commission at the time of filing, except when:

* * * * *

(3) A filing, including attachments, exceeds 10 megabytes, in addition to filing the requisite number of hard copies in accordance with this subpart, a CD-ROM, DVD or other electronic storage device, such as a USB flash drive, containing the filing and an index to the filing shall be filed with the Commission.

* * * * *

Subchapter E. FEES

§ 1.43. Schedule of fees payable to the Commission.

(a) *Fees for services.* The fees for services rendered by the Commission, **which are non-refundable**, are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
[Initial filing of Form A for intangible transition property notice...	\$550
Subsequent filing of notice changes in intangible transition property notice on Form B...	\$350]
Chapter 74 public information requests relating to perfection of security interests...	\$10 plus standard per page copying costs
Copies of papers, testimony, [microfiche,] records and computer printouts per sheet...	\$0.75
[Copies of microfiche per sheet...	\$1.50
Copies of microfilm per roll...	\$80]
Certifying copy of a paper, testimony or record...	\$5
Filing each securities certificate...	\$350
Filing each abbreviated securities certificate...	\$25
Filing each application for a certificate, permit or license [, or amendment of a certificate, permit or license]...	\$350
Filing each application for amendment of a certificate, permit or license...	\$350
Filing each application for abandonment of a certificate, permit or license...	\$350
Filing an application for a certificate of public convenience for telecommunications service...	\$250

<i>Description</i>	<i>Fee (in dollars)</i>
Filing an application for a certificate of public convenience for a motor common carrier of property or a group and party carrier of more than 15 passengers...	\$100
Filing an application for emergency temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker or for an extension thereof...	\$100
Filing an application for temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker...	\$100
[Filing an application for a certificate to discontinue intrastate common carrier passenger or household goods in use service...]	[\$10]
Filing an application to be a pipeline operator...	\$250
Filing an application to be a conservation service provider...	\$125
Filing an application to be a utility valuation expert...	\$125

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Subchapter F. SERVICE OF DOCUMENTS

§ 1.51. Instructions for service, notice and protest.

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(b) *Service list for parties.* The Commission will make available to filing users on the electronic filing system a service list for each docket in which they are a party that contains the following provisions:

* * * * *

(3) The e-mail addresses of parties who have agreed to receive electronic service.

(c) Exception to service list availability. Where an individual party is a victim of domestic violence with a protection from abuse order or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence, the address of the victim will be redacted on the service list.

§ 1.53. Service by the Commission.

(a) *Applicability.* This section applies to service of an order, notice or other document originating with the Commission and other documents designated by the Commission, except when the Commission specifically requires a different form of service. **A person is not required to register to use the electronic filing system to be a party in a Commission proceeding. A person does not have to register for the electronic filing system to agree to electronic service. A person that is not an electronic filing user or has not agreed to electronic service of documents shall be served in paper form in accordance with subsection (b)(1) and (2).**

(b) *Forms of service.*

(1) *First class mail.* Service may be made by mailing a copy [thereof to the person to be served, addressed

to the person designated in the initial pleading, submittal or notice of appearance at the person's residence, principal office or place of business] of the document to the party as set forth in § 1.24 (relating to notice of appearance or withdrawal).

* * * * *

(3) *Electronic.* Service may be made electronically to [filing users] a party who [have] has agreed to receive electronic service **except when the Act specifically requires a different form of service. [Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted.]**

(i) A party that is a filing user has agreed to the service of Commission documents exclusively by electronic means. The filing user will be sent an electronic mail notice informing them that the served document was posted and providing a link to the document on the same day the document is posted on the Commission's web site.

(ii) Parties may agree to electronic service in a Commission proceeding without being required to become a filing user.

(c) *Registered or certified mail.* [Service of a petition under § 3.391 (relating to arbitration of claims for billing and collecting services), and service of a complaint under section 702 of the act (relating to service of complaint on parties) must be by registered or certified mail, return receipt requested.] **Except as otherwise provided by the Act or another law, the following documents must be served by registered or certified mail, return receipt requested:**

(1) A Commission order under § 703(e) of the Act (relating to fixing of hearings).

(2) A complaint under § 702 of the Act (relating to service of complaints on parties). Service of complaints in all hearings, investigations and proceedings pending before the Commission may be made by e-mail upon agreement by each party.

(3) A petition under § 3.391 (relating to arbitration of claims for billing and collecting services).

(d) *Change of address.* It is the duty of a party to apprise the Commission promptly of changes to the party's current address.

* * * * *

§ 1.54. Service by a party.

(a) Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission shall be served upon parties in the proceeding and upon the presiding officer, if one has been assigned. **A person will not be required to register for the electronic filing system to be a party in a Commission proceeding. A person that does not register to use the electronic filing system shall file and serve documents in paper form.**

(b) Service may be made by one of the following methods:

(1) *First class mail.* [Service may be made by mailing the requisite number of copies to each

party as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid] If a party to the proceeding has not agreed to electronic service of documents, the other parties in the proceeding shall serve that party with the requisite number of copies of the filing as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid.

(2) *Personal.* Service may be made personally.

(3) *Electronic.*

(i) *Documents not filed with the Commission.* Service may be made electronically only to those parties who have agreed to accept service in that manner.

(ii) *Documents filed with the Commission.* Service may be made electronically [to filing users] to all parties in the proceeding who have agreed to [receive] electronic service [Filing users who have agreed to receive electronic service shall be served with an electronic mail notice stating that a document was filed on the electronic filing system. The notice constitutes service] of filings. If the party is a filing user, they shall be served an electronic mail notice stating that a document was filed on the electronic filing system. A party that is a non-filing user but who has agreed to the electronic service of filings shall file a paper copy of a notice with the Commission stating that a document was served on the other party electronically. In both cases, the notice shall act as evidence of service of the filing.

* * * * *

(c) In a proceeding in which only some of the parties participate, the parties, with the authorization of the presiding officer, may limit the service of documents to parties [and persons or individuals] which state on the record or request in writing that they wish to be served.

* * * * *

§ 1.56. Date of service.

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(b) Unless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party [and the document is served] by first-class mail by the United States Postal Service, 3 days shall be added to the prescribed period.

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§ 1.59. Number of copies to be served.

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(b) The following number of copies of documents shall be served on other parties in a proceeding as deemed appropriate by the presiding officer:

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Subchapter G. MATTERS BEFORE OTHER TRIBUNALS

§ 1.61. Notice and filing of copies of pleadings before other tribunals.

(a) When matters over which the Commission may have jurisdiction under the [act] Act are raised in proceedings filed with a court or other regulatory body by [a person] an entity subject to the [act] Act, either an appropriate application or petition, or notice of the proceedings and copies of the material pleadings filed

therein, shall be filed simultaneously with the Commission so that it may have sufficient notice and time for proper consideration of the matters within its jurisdiction.

(b) Upon filing of a petition for bankruptcy under the United States Bankruptcy Code (11 U.S.C.) by a jurisdictional public utility or licensee or by a parent, affiliate, or direct or indirect subsidiary of a public utility or licensee, the public utility or licensee shall file a copy of the petition with the Commission, and serve the [Office of Trial Staff] Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate.

* * * * *

(d) If the reorganization plan submitted under subsection (c) contemplates the abandonment of service, the submittal must include an application under Chapter 11 of the [act] Act (relating to certificates of public convenience). If a licensee's reorganization plan includes the abandonment of the license, the submittal must include the appropriate pleading as required by the [act] Act.

Subchapter H. PUBLIC ACCESS TO COMMISSION RECORDS

§ 1.71. Statement of objectives.

The Commission's records maintenance system is intended to provide for the greatest degree of public access to Commission documents that is consistent with the exercise of the functions of the Commission under the [act] Act and other applicable laws. The Commission's system is designed to meet that objective and to give public notice of which classes of documents are available for inspection. The system provides a predictable standard, which nevertheless permits the Commission to take cognizance of the circumstances of individual requests for documents which may militate in favor of or against disclosure.

§ 1.72. Content and review of formal case files.

* * * * *

(d) [Procedures. Procedures for review of correspondence and report folders will conform with the following:

(1) Correspondence folders. Review procedures for correspondence folders will be as follows:

(i) A person desiring access to a correspondence folder of a formal case may request file room personnel for a review of the file to determine which material contained therein may be released for inspection.

(ii) The review will be made and the requestor notified within 30 days.

(iii) If dissatisfied with the results of the first review, the requestor may ask that the documents removed from the correspondence folder before it was given to him be reviewed again.

(iv) A 30-day period applies to the second request for review.

(2) Report folders. Review procedures for report folders will be as follows:

(i) A person may request file room personnel for a review of particular documents or for a specifically defined portion of the report folder to deter-

mine which, if any, material contained in the folder may be released for inspection.

(ii) The review, except for good cause, will be made and the requestor notified within 30 days [Reserved].

§ 1.73. Fiscal records.

* * * * *

(b) No fiscal record, nor unseverable part thereof, which contains material exempted from the disclosure requirements provided in the [act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. §§ 66.1—66.4) or which otherwise presents a substantial need for nondisclosure] the Right-to-Know Law (65 P.S. §§ 67.101—67.3104), will be available for public inspection.

* * * * *

§ 1.75. [Review of staff determination] [Reserved].

[When advised by a staff member that no further staff review of the request for review is possible, the requestor may petition the Commission for review as to a specific or definite class of documents.]

§ 1.77. [Extensions of time to review folders] [Reserved].

[For good cause the Commission may extend the time limits applicable to requests for access to documents. In the case of documents displaying no need for confidentiality, or, conversely, documents containing information which the Commission considers improper for public inspection, the Commission may direct the appropriate treatment thereof, notwithstanding contrary provisions in §§ 1.71—1.76.]

Subchapter L. UNOFFICIAL STATEMENTS AND OPINIONS

§ 1.96. Unofficial statements and opinions by Commission personnel.

Statements contained in formal opinions of the Commission or in decisions of a presiding officer which are not necessary in resolving the case, and informal opinions, whether oral or written, expressed by Commissioners, presiding officers, legal counsel, [employees] employees or representatives of the Commission and reports drafted by Commission bureaus are only considered as aids to the public, do not have the force and effect of law or legal determinations, and are not binding upon the Commonwealth or the Commission.

CHAPTER 3. SPECIAL PROVISIONS

Subchapter A. SPECIAL COMMISSION ACTIONS EMERGENCY RELIEF

§ 3.1. Definitions.

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

Emergency—A situation which presents a clear and present danger to life or the public interest or property or which is uncontested and requires action prior to the next scheduled public meeting.

Emergency order—An ex parte order issued by a single Commissioner, the Commission, the Commission’s [Di-

rector of Operations] Executive Director or the Commission’s Secretary in response to an emergency.

* * * * *

EX PARTE EMERGENCY ORDERS

§ 3.2. Petitions for issuance of emergency orders.

(a) To the extent practicable, a petition for emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally) and [shall] must be served on the persons directly affected by the application and also on the statutory advocates.

* * * * *

§ 3.3. Disposition of ex parte emergency orders.

(a) Authority. The Chairperson, a Commissioner, the Commission’s [Director of Operations] Executive Director and the Commission’s Secretary have the authority to issue an emergency order.

(b) Form. An emergency order will be issued in writing and filed with the Secretary with copies to Commissioners [and the Director of Operations] and the Executive Director. The emergency order will be electronically served on the statutory advocates.

(c) Ratification. An emergency order or the denial of a petition for emergency order issued by a single Commissioner or the [Director of Operations] Executive Director or the Commission’s Secretary will be ratified, modified or rescinded by the Commission at the next scheduled public meeting after issuance of the order.

(d) Service. An emergency order or the denial of a petition for emergency order will be served by the Secretary as expeditiously as practicable upon the persons directly affected by the decision and the statutory advocates with copies to the Commissioners and the [Director of Operations] Executive Director.

§ 3.4. Hearings following issuance of emergency orders.

* * * * *

(b) The petition for expedited hearing shall be filed with the Secretary and a copy served upon the Chief Administrative Law Judge, the statutory advocates and all parties to the underlying proceeding.

* * * * *

(d) If the emergency order is issued by a single Commissioner or the [Director of Operations] Executive Director or by the Commission’s Secretary, the presiding officer will have the authority to stay the effect of the order until the next scheduled public meeting.

* * * * *

INTERIM EMERGENCY RELIEF

§ 3.6. Petitions for interim emergency orders.

(a) A party may submit a petition for an interim emergency order during the course of a proceeding. The petition shall be filed with the Secretary and served contemporaneously on the Chief Administrative Law Judge, on the statutory advocates and on the parties.

* * * * *

Subchapter B. INFORMAL PROCEEDINGS GENERALLY APPLICATIONS

§ 3.101. Municipal contracts.

No formal application need accompany municipal contracts filed under section 507 of the [act] Act (relating

to contracts between public utilities and municipalities), but an executed copy or [**reproduction**] **reproduced** copy of the contract [**shall**] **must** be filed with the Commission at least 30 days prior to the effective date of the contract.

INFORMAL COMPLAINTS AND INVESTIGATIONS

§ 3.111. Form and content of informal complaints.

* * * * *

(b) Informal complaints [**shall**] **as defined in subsection (a) must** be submitted to the Secretary for referral to the appropriate bureau, addressed to the following: Pennsylvania Public Utility Commission, [**Post Office Box 3265**] **400 North Street**, Harrisburg, Pennsylvania [**17105-3265**] **17120**.

* * * * *

§ 3.113. Resolution of informal investigations.

* * * * *

(b) Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission's official actions resolving informal investigations will be as follows:

(1) When the Commission staff determines that no violation or potential violation of the [**act**] **Act** has occurred, the informal investigation will be terminated by letter **served on all parties involved**.

* * * * *

(3) When the utility, or other [**person**] **party** subject to the Commission's jurisdiction, has committed to undertake action to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission's consideration of the settlement or approval of the utility's action will occur at public meeting. Except for staff reports and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. Before the Commission makes a final decision to adopt the settlement or to approve the utility's action, the Commission will provide other potentially affected [**persons**] **parties** with the opportunity to submit exceptions thereon or to take other action provided for under law.

Subchapter E. MOTOR TRANSPORTATION PROCEEDINGS

§ 3.381. Applications for transportation of property, household goods in use and persons.

(a) *Applications.*

* * * * *

(3) *Filing and verification.* An original application shall be filed by the applicant, or an authorized officer or representative, with the Secretary of the Pennsylvania Public Utility Commission, [**Post Office Box 3265**] **400 North Street**, Harrisburg, Pennsylvania [**17105-3265**] **17120**. The application shall be verified under § 1.36 (relating to verification). An application by a common carrier for a certificate of public convenience authorizing the transportation of passengers or household goods in use may be accompanied by verified statements of the applicant **and supporting party or firm**, as set forth in subsection (c)(1)(iii)(A)(II) **and (III)**. An application by a contract carrier for a permit authorizing the transportation of passengers or household goods in use may be accompanied by a verified statement of the applicant, as

set forth in subsection (c)(1)(iii)(A)(II) and a copy of the bilateral contract or statement of the shipper that it will enter into a bilateral contract with the carrier.

* * * * *

Subchapter F. ARBITRATION OF DISPUTES

§ 3.391. Arbitration of claims for billing and collecting services.

(a) Each petition for arbitration of a dispute under [**section 4 of the act of April 14, 1949 (P.L. 482, No. 98) (53 P.S. § 2264)**] **section 505 of the Water Services Act (53 P.S. § 3102.505)** shall set forth the following:

* * * * *

Subchapter H. FORMS

§ 3.551. Official forms.

Forms for applications, petitions, complaints and other matters are available on the Commission's [**website**] **web site** or from the Secretary of the Commission, [**P. O. Box 3265**] **400 North Street**, Harrisburg, Pennsylvania, [**17105-3265**] **17120**; (717) 772-7777.

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS

APPLICATIONS

§ 5.12. Contents of applications.

(a) Applications must conform to this section unless a form or other specific requirements are provided in Chapter 3 (relating to special provisions). Applications [**must :**] **must:**

* * * * *

(4) Set forth, in the order indicated, the [**following-unless**] **following unless** otherwise provided by this chapter or in Chapter 3 for the specific type of application involved:

* * * * *

(iii) The name, title, mailing address, telephone number and electronic mail address, if available, of the person to whom correspondence or communication in regard to the application is to be addressed. [**The Commission will serve, when required, notices, orders and other papers upon the person named, and service will be deemed to be service upon the applicant.**]

(5) Be served upon the statutory advocates.

(a.1) The Commission will serve, when required, notices, orders and other papers on the person named and on the statutory advocates, and service will be deemed to be service on the applicant.

(b) Subsection (a) supersedes 1 Pa. Code § 35.2 (relating to contents of applications).

§ 5.13. Applications for construction or alteration of crossings.

* * * * *

(b) Plans submitted for the construction, relocation, alteration, protection or abolition of a crossing [**complained against shall**] **must** be accompanied by the names and post office addresses of the record owners of all property necessary to be acquired in the execution thereof, and shall, when directed by the Commission, be supplemented by a description by metes and bounds of all property necessary to be acquired.

§ 5.14. Applications requiring notice.

(a) *General rule.* Notice of applications to the Commission for authority under the [act] Act must be published in the *Pennsylvania Bulletin* and as may otherwise be required by the Commission. The following list of the applications for authority is for informational purposes only, and any omission of a relevant application does not eliminate or otherwise affect the requirement of its publication in the *Pennsylvania Bulletin* or as may be otherwise required by the Commission.

(1) To initiate utility service to the public, including any of the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.
- (viii) Steam.
- (ix) Rail service.

(x) Common carrier service by motor vehicle, except as provided for in § 3.381(b) (relating to application for transportation of property, household goods in use and persons).

(2) To initiate, in a different nature or to a different territory than is currently authorized, utility service to the public, including any of the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.
- (viii) Steam.
- (ix) Rail Service.

(x) Common carrier service by motor vehicle, except as provided for in § 3.381(b).

(3) To abandon, in whole or in part, utility service to the public, including any of the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.
- (viii) Steam.
- (ix) Rail Service.

(x) Common carrier service by motor vehicle, except as provided for in § 3.381(b).

(4) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.

(5) To acquire 5% or more of the voting stock of another corporation.

(6) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619).

(b) *Supplemental requirements.* The Secretary may require additional publication or notification in one or more of the following ways:

* * * * *

(d) [*Publication of application.* Except as set forth in §§ 3.361—3.363, 3.501 and 57.71, 57.72 and 57.74—57.77 as relating to the 60-day protest period, or as otherwise provided by the Secretary, application to the Commission for the following types of authority will be published in the *Pennsylvania Bulletin* and, as directed by the Secretary, in a newspaper of general circulation serving the geographical territory affected by the application and shall be subject to a 15-day protest period.

(1) To initiate fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(2) To initiate, in a different nature or to a different territory than is currently authorized, fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(3) To abandon, in whole or in part, fixed utility service to the public, including to the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(4) To initiate rail utility service to the public.

(5) To initiate, in a different nature or to a different territory than is currently authorized, rail utility service to the public.

(6) To abandon, in whole or in part, rail utility service to the public.

(7) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.

(8) To acquire 5% or more of the voting stock of another corporation.

(9) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619).

(10) To construct, alter or abandon, in whole or in part, or to change the status of a rail utility agency station or team track] [Reserved].

FORMAL COMPLAINTS

§ 5.21. Formal complaints generally.

* * * * *

(c) A copy of the complaint will be served by the Commission, by certified mail, upon the respondent unless they are a filing user. The Commission may serve a copy of the complaint by e-mail upon agreement by each party, under 66 Pa.C.S. § 702 (relating to service of complaints on parties). If the complaint proposes to change an existing or proposed tariff rate of a fixed public utility subject to the jurisdiction of the Commission, a copy of the complaint will be served by the Commission on the [Office of Trial Staff] Bureau of Investigation and Enforcement, Office of Consumer Advocate and Office of Small Business Advocate.

(d) The filing of a formal [compliant] complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. Motions may be filed in accordance with §§ 5.101 and 5.102 (referring to preliminary objections; and motions for summary judgment and judgment on the pleadings).

* * * * *

§ 5.22. Content of formal complaint.

(a) A formal complaint must set forth the following:

(1) The name, mailing address, telephone number, [telefacsimile] fax number and electronic mailing address, if applicable, of the complainant.

(2) If the complainant is represented by an attorney, the name, mailing address, telephone number, [telefacsimile] fax number and Pennsylvania Supreme Court identification number of the attorney and, if available, the electronic mailing address.

* * * * *

§ 5.24. Satisfaction of formal complaints.

* * * * *

(c) In the case of certification of satisfaction under subsection (b), the respondent shall simultaneously serve a copy of the respondent's certified writing, including a statement informing the complainant of the complainant's right to object in writing within 10 days, upon the complainant. [Unless] In a case where there is only one respondent, unless the complainant objects, in writing, to the certification within 10 days of its filing, the complaint docket will be marked closed. In a case involving two or more respondents, the docket will not be marked closed until the filing of certified statements or certificates of satisfaction resolving all claims against all respondents.

* * * * *

§ 5.31. Staff-initiated complaints.

* * * * *

(b) A Commission bureau filing a complaint under this section involving a fixed utility or licensee will provide a copy to the [Office of Trial Staff] Bureau of Investigation and Enforcement, the Chief Counsel, the Office of Consumer Advocate, and the Office of Small Business Advocate.

* * * * *

PETITIONS

§ 5.41. Petitions generally.

(a) General requirements. Petitions for relief under the [act] Act or other statute that the Commission administers, must be in writing, state clearly and concisely the interest of the petitioner in the subject matter, the facts and law relied upon, and the relief sought. A document, the material part thereof or a copy must be attached when a petition is based upon the document, the material part thereof or a copy. If the document, the material part thereof or a copy is not accessible, the petition must set forth that the document, the material part thereof or the copy is not accessible and the reason, and set forth the substance of the document or material part thereof. Petitions for relief must comply with § 1.51 (relating to instructions for service, notice and protest).

(b) Service. A copy of the petition shall be served on all persons directly affected and on other parties whom petitioner believes will be affected by the petition. Copies of the petition shall be served upon the [Office of Trial Staff] Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate. Service shall be evidenced with a certificate of service filed with the petition.

* * * * *

§ 5.42. Petitions for declaratory orders.

* * * * *

(c) [Copies shall also be served in compliance with Commission direction] Copies. Copies must also be served as directed by the Commission.

* * * * *

§ 5.43. Petitions for issuance, amendment, repeal[,] or waiver of Commission regulations.

* * * * *

(b) A copy of the petition shall be served on all persons directly affected and on other parties who petitioner believes will be affected by the petition. Copies of the petition shall be served on the [Office of Trial Staff] Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate. Service shall be evidenced with a certificate of service filed with the petition.

(c) [Copies shall also be served in compliance with Commission direction.] Copies. Copies must also be served as directed by the Commission.

* * * * *

PROTESTS

§ 5.52. Content of a protest to an application.

(a) Form. A protest to an application must:

* * * * *

(2) State the grounds of the [protest .] protest.

(3) Set forth the facts establishing the protestant's standing to protest.

(4) Request a hearing before the Office of Administrative Law Judge or one will not be scheduled.

(b) *Motor carrier.* Protests in motor carrier cases must conform with § 3.381(c)(1) (relating to applications for transportation of property, **household goods in use** and persons).

* * * * *

§ 5.53. Time of filing.

A protest shall be filed within the time specified in the published notice of the application. If no protest time is specified **in the notice**, the protest shall be filed within **[60] 30** days of publication of the notice **except upon good cause shown**.

INTERVENTION

§ 5.72. Eligibility to intervene.

(a) **[Persons] Parties.** A petition to intervene may be filed by a person claiming a right to intervene or an interest of **[such] the** nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

* * * * *

§ 5.74. Filing of petitions to intervene.

* * * * *

(b) Petitions to intervene shall be filed:

* * * * *

(3) [In accordance with § 5.53 if no deadline is set in an order or notice with respect to the proceedings] Within the time specified in an order or notice with respect to the proceedings. If no deadline is specified, the petition must be filed within 30 days of publication of the notice, except upon good cause shown.

* * * * *

CONSOLIDATION

§ 5.81. Consolidation

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay. **The Commission or presiding officer may identify indispensable parties to a proceeding and interplead such parties if such action is deemed necessary to enhance the record or to give more comprehensive consideration to the parties, facts and issues in the proceeding.**

* * * * *

Subchapter B. HEARINGS

PREHEARING AND OTHER CONFERENCES

§ 5.222. Initiation of prehearing conferences in nonrate proceedings.

* * * * *

(c) The following matters shall be considered at prehearing conference:

* * * * *

(4) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including the following:

* * * * *

(v) A proposed plan and schedule of discovery which may include specific limitations on the number of written interrogatories and requests for admissions a party may propound on another party.

(vi) The method of service by a party.

(d) Parties and counsel will be expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto.

* * * * *

§ 5.224. Prehearing conference in rate proceedings.

* * * * *

(b) The first prehearing conference shall be held as soon as practicable after the entry of the order of investigation. The parties shall come to the first prehearing conference prepared to discuss the following:

* * * * *

(3) Tentative scheduling of evidentiary hearings, close of the record, filing of briefs and other matters deemed appropriate, **such as the method of service by a party.**

* * * * *

HEARINGS

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

* * * * *

(c) If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner.

(d) Subsection (a)(1)—(3) does not apply if the party is not required to secure counsel and there is no finding that the party has committed an abuse of process.

(e) Dismissal of a complaint, petition or application with prejudice of the complainant, petitioner or applicant for the failure to appear is prohibited.

TRANSCRIPT

§ 5.251. Recording of proceedings.

* * * * *

(d) **[Subsections (a)—(c) supersede 1 Pa. Code § 35.131 (relating to recording of proceedings)] Special Agent Proceedings. Special agent proceedings will be audio recorded and will not be transcribed, unless the parties request the transcription of the audio recording or other circumstances warranting transcription exist.**

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.131 (relating to recording of proceedings).

§ 5.252. Review of testimony.

* * * * *

(c) Upon request for review, the Office of Administrative Law Judge will schedule a time and place for the review which shall be open to all parties. The court reporting firm **[shall] will** submit the **[tapes] recordings** and equipment necessary for the review and

[shall] will arrange for the court reporter responsible for transcribing the [tapes] recordings to be present at the review.

(d) Actual costs associated with making the [tapes] recordings available for review, including the time of the court reporter, [shall] must be paid by the party requesting review.

* * * * *

Subchapter C. INTERLOCUTORY REVIEW

§ 5.304. Interlocutory review of discovery matters.

* * * * *

(d) [Responsive brief] Brief. A party may file a [responsive] brief within 7 days of a request for certification, which:

* * * * *

§ 5.306. Expedited notification.

A presiding officer may order notification of parties by telephone, [telefacsimile] fax transmittal or other electronic means when time periods are short and delivery by mail may not prove adequate. Notification by means other than by mail will be confirmed by the presiding officer by service in writing and a filing will be made with the Secretary regarding confirmation.

* * * * *

Subchapter D. DISCOVERY

GENERAL

§ 5.323. Hearing preparation material.

* * * * *

(b) Statements. Upon written request, a party is entitled to immediate receipt of a [photostatic] copy or like reproduction of a statement concerning the action or its subject matter previously made by that party, another party or a witness. If the statement is not provided, the party may move for an order from the presiding officer. For the purposes of this subsection, a statement previously made is one of the following:

* * * * *

TIMING AND SUPPLEMENTAL RESPONSES

§ 5.331. Sequence and timing of discovery.

* * * * *

(c) Commission staff may initiate discovery at an earlier time. Commission staff discovery prior to formal Commission action to initiate a proceeding shall be designated as "Staff data requests" and shall be answered fully and completely by the public utility within the time periods specified in § 5.342(d) (relating to answers or objections to written interrogatories by a party). Unless a presiding officer has been designated, objections and motions to compel shall be ruled upon by the Chief Administrative Law Judge. Once a protest or adverse pleading is filed with the Commission, staff data requests are deemed withdrawn.

* * * * *

TYPES OF DISCOVERY

§ 5.342. Answers or objections to written interrogatories by a party.

* * * * *

(g) Motion to compel. Within 10 days of service of an objection to interrogatories, or until such time as the parties may determine by mutual agreement, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection

[and] to compel that the interrogatory be answered. The motion to compel must include the interrogatory objected to and the objection. If a motion to compel is not filed within 10 days of service of the objection, or until such time as the parties may determine by mutual agreement, the objected to interrogatory will be deemed withdrawn.

* * * * *

§ 5.349. Requests for documents, entry for inspection and other purposes.

* * * * *

(b) As an alternative to permission to inspect and copy, and if requested by [the] a party seeking discovery, the party against whom discovery is sought shall reproduce the designated documents at the requesting party's expense. Regulated utilities shall provide copies of requested materials to Commission staff, which includes the [Office of Trial Staff] Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate at no charge.

* * * * *

§ 5.351. On the record data requests.

(a) A party may request that a witness provide information or documents at a later time as part of the witness' response to a question posed during cross-examination [in the course of a rate proceeding]. The request may only be made orally or in writing and shall be presented at the time the witness appears for cross-examination.

* * * * *

LIMITATIONS

§ 5.365. Orders to limit availability of proprietary information.

* * * * *

(g) Confidential security information. Challenges to a public utility's designation of confidential security information or requests in writing to examine confidential security information in nonadversarial proceedings are addressed in Chapter 102 (relating to confidential security information).

(h) Where a complainant in a formal proceeding has indicated in the complaint that a court has granted the complainant or another individual in the same residence a "protection from abuse" order or any other order which provides clear evidence of domestic violence against the complainant or the other individual that is currently in effect for personal safety or welfare, or provided a copy of the same, all parties are required to exclude or redact the complainant's personal address and contact information from any filings to the proceeding.

Subchapter E. EVIDENCE AND WITNESSES

EVIDENCE

§ 5.408. Official and judicial notice of fact.

* * * * *

(c) Upon notification that facts are about to be or have been noticed, a party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed. A presiding officer shall afford an adversely affected party the opportunity to show that the facts are not properly noticed or that alterna-

tive facts should be noticed prior to the close of the record and the issuance of an initial decision or recommended decision.

* * * * *

§ 5.409. Copies and form of documentary evidence.

(a) Except as otherwise provided in this chapter, Chapters 1 and 3 (relating to rules of administrative practice and procedure; and special provisions), when exhibits of a documentary character are offered in evidence, copies shall be furnished to the presiding officer and to the parties present at the hearing, unless the presiding officer otherwise directs. [**Two copies**] **One copy** of each exhibit of documentary character [**shall**] **must** be furnished for the use of the Commission unless otherwise directed by the presiding officer.

* * * * *

WITNESSES

§ 5.412. Written testimony.

* * * * *

(f) *Service.* Written testimony shall be served upon the presiding officer and parties in the proceeding in accordance with the schedule established by this chapter. At the same time the testimony is served, a certificate of service for the testimony shall be filed with the Secretary. [**Pre-served testimony furnished to the court reporter during an adjudicatory proceeding before the Commission shall be filed with the Commission as required under § 5.412a (relating to electronic submission of pre-served testimony).**]

(g) *Copies.* At the hearing at which the testimony is authenticated, counsel for the witness [**shall**] **must** provide [**two copies**] **one copy** of the testimony to the court reporter or to the presiding officer if no court reporter is present.

* * * * *

§ 5.412a. [**Electronic submission of pre-served testimony**] [**Reserved**].

[**A General requirement for electronic submission.** A party serving pre-served testimony in proceedings pending before the Commission under § 5.412(f) (relating to written testimony) is required, within 30 days after the final hearing in an adjudicatory proceeding, unless the time period is otherwise modified by the presiding officer, to electronically file with, under § 1.32(b) (relating to filing specifications), or provide to the Secretary's Bureau a compact disc or technology prescribed by the Commission containing the testimony furnished by the party to the court reporter during the proceeding.

(b) *Form of electronic submission.* Electronically submitted testimony must be limited to pre-served testimony documents and be in Portable Document Format. Exhibits attached to pre-served testimony documents may be electronically submitted to the Commission in accordance with subsection (a). Exhibits not electronically submitted with pre-served testimony shall be submitted in paper form to the court reporter at hearing. The electronic submission requirements in this section do not apply to discovery requests or responses, or pre-filed testimony, including testimony filed under § 53.53(c) (relating to information to be furnished with proposed general rate increase filings in excess of \$1 million).

(1) *Electronic submission.* Each piece of pre-served testimony filed through the Commission's electronic filing system shall be uploaded separately. Each piece of pre-served testimony submitted to the Secretary's Bureau on a compact disc or other technology as prescribed by the Commission may be uploaded onto one compact disc, pending file size limitations.

(2) *Electronic submission of testimony modified at hearing.* Pre-served testimony submitted to the Commission must match exactly the version of testimony the presiding officer has required to be submitted to the court reporter at hearing. When a presiding officer requires a party to make hand-marked modifications to testimony during the hearing before submitting the testimony to the court reporter, the pre-served testimony electronically submitted to the Commission shall be marked to reflect the modifications. When a presiding officer does not require a party to make modifications to testimony at hearing before submitting the testimony to the court reporter, the pre-served testimony electronically submitted to the Commission may not be marked. Testimony not admitted into the record during a hearing may not be electronically submitted to the Commission.

(i) *Electronic submission of testimony stricken at hearing.* Pre-served testimony which was stricken at hearing shall be revised to reflect that which was stricken by containing hand-marked strikeouts or electronic strikeouts on the testimony. A party may not completely electronically delete testimony which was stricken at hearing.

(ii) *Pagination of electronically submitted testimony documents.* Striken or modified text on electronically submitted pre-served testimony documents must appear on the same page as the stricken or modified text on the pre-served testimony documents submitted to the court reporter at hearing.

(3) *Labeling of electronically submitted testimony.* Pre-served testimony electronically submitted to the Commission must be labeled consistent with the following examples:

- (i) “__ St. No. __ Direct Testimony of ____.”
- (ii) “__ St. No. __ -R Rebuttal Testimony of ____.”
- (iii) “__ St. No. __ -SR Surrebuttal Testimony of ____.”

(c) *Submission of paper copies of pre-served testimony to the court reporter when electronically filing pre-served testimony.* When electronically filing pre-served testimony with the Commission, one paper copy of pre-served testimony shall be provided to the court reporter at hearing.

(d) *Electronic submission of confidential or proprietary testimony.* Electronically submitted testimony confidential or proprietary in nature shall be submitted to the Secretary's Bureau on a compact disc or other technology as prescribed by the Commission. The compact disc must be labeled “CONFIDENTIAL” or “PROPRIETARY.” Confidential or proprietary testimony may not be filed through the Commission's electronic filing system. Electronically submitted testimony confidential or proprietary in nature must match exactly the version of

the confidential or proprietary testimony submitted to the court reporter at hearing.

(e) *Electronic submission of improper testimony.* If a party in an adjudicatory proceeding discovers that improper testimony documents have been electronically submitted to the Commission, the party may raise the improper submission with the presiding officer assigned to the adjudicatory proceeding. The presiding officer or the Commission will make a determination regarding the submission of improper testimony.

(f) *Electronic access to electronically submitted testimony.* A party shall obtain an eFiling account with the Commission to view electronically submitted pre-served testimony and to receive daily action alerts from the Commission's case and document management database that pre-served testimony has been electronically submitted to the Commission.]

Subchapter G. BRIEFS

§ 5.502. Filing and service of briefs.

* * * * *

(c) [*Filing of briefs in nonrate proceedings*] [Reserved].

[(1) *Initial brief.* An initial brief shall be filed by the party with the burden of proof except as provided by agreement or by direction of the presiding officer.

(2) *Response brief.* A party may file a response brief to the initial brief.]

(d) *Filing of briefs [in rate proceedings]*.

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(e) *Filing of amicus curiae briefs.* A person interested in the issues involved in a Commission proceeding, although not a party, may, without applying for leave to do so, file amicus curiae briefs in regard to those issues. Unless otherwise ordered, amicus curiae briefs [**shall**] **must** be filed and served in the manner and number required within the time allowed by this section, absent good cause.

(f) *Deadlines.* [**Initial briefs, main briefs, responsive briefs**] **Main briefs** and reply briefs [**shall**] **must** be filed and served within the time fixed by the presiding officer. [**If no specific times are fixed, initial briefs or main briefs shall be filed and served within 20 days after the date of service of notice of the filing of the transcript and responsive briefs or reply briefs shall be filed within 40 days after date of service of the notice of the filing of the transcript.**]

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(h) *Supersession.* [**Subsections (a)—(f)**] **Subsections (a)—(e)** supersede 1 Pa. Code § 35.191 and 35.193 (relating to proceedings in which briefs are to be filed; and filing and service of briefs).

Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT

§ 5.531. Certification of record without decision.

(a) If a proceeding is referred to a presiding officer, that officer will normally [**file**] **issue** a decision. The

record will be certified to the Commission without a decision of the presiding officer only as required or allowed by the Commission.

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§ 5.533. Procedure to except to initial[, **tentative**] and recommended decisions.

(a) In a proceeding, exceptions may be filed by a party and served within 20 days after the initial[, **tentative**] or recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.

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Subchapter J. REPORTS OF COMPLIANCE

§ 5.591. Reports of compliance.

(a) A [**person**] **party** subject to the jurisdiction of the Commission [**who**] **that** is required to do or perform an act by a Commission order, permit or license provision shall file with the Secretary a notice stating that the requirement has or has not been met or complied with.

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[Pa.B. Doc. No. 24-1574. Filed for public inspection November 1, 2024, 9:00 a.m.]

DEPARTMENT OF HUMAN SERVICES

**[55 PA. CODE CHS. 1330, 3800 AND 5330]
Psychiatric Residential Treatment Facilities**

Statutory Authority

Notice is hereby given that the Department of Human Services (Department) under the authority of sections 201(2), 911 and 1021 of the Human Services Code (62 P.S. §§ 201(2), 911 and 1021) and section 201(2) of the Mental Health and Intellectual Disability Act of 1966 (50 P.S. § 4201(2)) intends to adopt this proposed rulemaking as set forth in Annex A.

Purpose of Regulation

The Department licenses residential treatment facilities (RTF) that serve children, youth or young adults under the authority of Chapter 3800 (relating to child residential and day treatment facilities). A subset of the RTFs that provide medically necessary behavioral health treatment in a residential setting to children, youth or young adults under 21 years of age with a behavioral health diagnosis is also certified by the Department. These RTFs are referred to as psychiatric residential treatment facilities (PRTF) in this proposed rulemaking.

The Department proposes to codify the minimum licensing standards, Medical Assistance (MA) participation requirements and MA payment conditions for PRTFs that serve children, youth or young adults with a behavioral health diagnosis in Chapters 1330 and 5330 (relating to psychiatric residential treatment facility; and psychiatric residential treatment facility). Chapter 5330 establishes the Department's minimum program and operational standards for a provider to obtain a license as a PRTF. Chapter 1330 establishes the Department's MA payment conditions and MA participation requirements for PRTFs. All PRTFs will need to be licensed under and comply with Chapter 5330, but only those PRTFs that want to receive

MA payment must comply with Chapter 1330. This proposed rulemaking will distinguish licensed PRTFs from other RTFs licensed by the Department and streamline the current licensure and certification process. Upon promulgation of the final-form rulemaking, PRTFs will be subject to Chapters 1330 and 5330.

This proposed rulemaking specifically addresses medically necessary behavioral health treatment for children, youth or young adults provided by a PRTF. It also includes requirements for PRTFs that are in line with the Federal requirements for PRTFs. Finally, this proposed rulemaking adds language to address specific health, safety and treatment needs of children, youth or young adults with a behavioral health diagnosis. This proposed rulemaking supports the goal of better services for children, youth or young adults with behavioral health needs and promotes the goal of children, youth or young adults returning to their home and community in the shortest time possible.

This proposed rulemaking will support children, youth or young adults who receive behavioral health treatment in a residential setting by adding requirements for minimum standards for treatment services, including the required frequency for individual therapy, group therapy and family therapy, and the qualifications for the individuals who provide therapy. This proposed rulemaking will also further delineate staff roles and responsibilities and enhance staff ratio requirements for direct supervision of children, youth or young adults.

This proposed rulemaking will update the current staff requirements to allow PRTFs to better meet the behavioral health needs of the children, youth or young adults served. While this proposed rulemaking maintains the current structure of a director, childcare worker and childcare worker supervisor, the minimum standards for these positions and the job titles are proposed to be updated. This proposed rulemaking also requires additional positions to meet Federal requirements and to better support the children, youth or young adults with behavioral health needs receiving treatment in a PRTF. The new positions include a medical director, treatment team leader, clinical director, mental health professional and registered nurse. This proposed rulemaking also includes minimum standards for additional positions, including an advanced practice professional and a licensed practical nurse. The fiscal impact of the changes to staff requirements is explained in detail as follows.

The current staff ratio requirements are also increased in this proposed rulemaking for both secure and nonsecure PRTFs, as described as follows. In addition, this proposed rulemaking increases certain types of reportable incidents. New incidents that are proposed to be reported include disruption of utilities, use of prohibited restrictive procedures and all medication errors. Because manual restraints have the potential to cause physical harm and can also have a traumatic impact on both the individual who is restrained and on the staff applying the restraint, this proposed rulemaking reduces the length of time for a manual restraint to be applied to a child, youth or young adult.

This proposed rulemaking also includes different admission requirements for secure PRTFs. Secure PRTFs prohibit egress from the facility or a portion thereof through internal locks, exterior locks or secure fencing around the facility. Generally, a child, youth or young adult needs to be alleged delinquent or adjudicated delinquent to receive care in a secure setting. This proposed rulemaking, however, deletes the delinquency

requirement because MA can be used to pay for a child's, youth's or young adult's medically necessary behavioral health treatment in a secure PRTF if the secure PRTF does not exclusively treat children, youth or young adults who are alleged delinquent or adjudicated delinquent. As a result, admission of a child, youth or young adult whose treatment is funded by MA to a secure PRTF will depend on the child's, youth's or young adult's medically recommended treatment needs, rather than on the child's, youth's or young adult's delinquency status.

Finally, this proposed rulemaking codifies the payment requirements for treatment in a PRTF.

Requirements

As discussed previously, proposed Chapter 1330 contains the requirements PRTF providers will need to follow to receive MA payment for the services provided to a child, youth or young adult who receives medically necessary behavioral health services. Proposed Chapter 5330 identifies the minimum program and operational standards for a provider to obtain a license as a PRTF.

The following is a summary of the major provisions of each chapter included in this proposed rulemaking.

Chapter 1330. Psychiatric Residential Treatment Facility—Payment

General Provisions (§§ 1330.1 and 1330.2)

This proposed rulemaking requires a PRTF to be enrolled in the MA program to receive payment for medically necessary behavioral health services rendered to children, youth or young adults with a behavioral health diagnosis. This proposed rulemaking also establishes definitions of key terms used under Chapter 1330. Terms that are used in both Chapter 1330 and Chapter 5330 are defined consistently.

Scope of Benefits (§ 1330.11)

This proposed rulemaking establishes that children, youth or young adults who are MA recipients and have a behavioral health diagnosis are eligible to receive medically necessary services in a PRTF.

Provider Participation (§§ 1330.21—1330.23)

This proposed rulemaking includes both the initial and ongoing requirements for a PRTF to participate in the MA program. This proposed rulemaking also establishes requirements for when a PRTF changes ownership.

Payment (§§ 1330.31—1330.43)

This proposed rulemaking addresses MA payment for treatment in a PRTF, including a secure PRTF; the requirement that services be medically necessary; and the conditions for payment for admission and continued stay at a PRTF. This proposed rulemaking includes additional requirements for admission to a secure PRTF. This proposed rulemaking adds a requirement for approval by the Department prior to admission to a secure PRTF if a child's, youth's or young adult's treatment is being funded by MA. Further, this proposed rulemaking does not require that a child, youth or young adult be an alleged delinquent or adjudicated delinquent to be admitted to a secure RTF. Rather, admission to a secure PRTF is based on the clinical need for a secure PRTF. This proposed rulemaking also addresses limitations on payment, including payment for hospital-reserved bed days and during periods of elopement, visitation and days of care for which no payment will be made. This proposed rulemaking explains how the Department will set rates for treatment provided in a PRTF, including the Department's rate-setting policy, cost reporting procedures, al-

allowable and nonallowable costs, income and offsets to allowable and nonallowable costs, and how costs should be allocated. It also includes requirements for related party transactions, billing requirements, financial records and third-party liability.

Utilization Review (§ 1330.51)

This proposed rulemaking requires claims submitted for MA payment to be subject to the utilization review procedures under Chapter 1101 (relating to general provisions).

Administrative Sanctions (§ 1330.61)

This proposed rulemaking addresses when sanctions will be imposed on a PRTF and when the Department will deny or recover payment for services or items.

Provider Right to Appeal (§ 1330.71)

This proposed rulemaking provides that appeals related to Chapter 1330 shall be made in accordance with Chapter 41 (relating to medical assistance provider appeal procedures).

Chapter 3800. Child Residential and Day Treatment Facilities

Exemptions (§ 3800.3)

This proposed rulemaking amends Chapter 3800 to specifically exclude PRTFs licensed under Chapter 5330. This provision will take effect 12 months after the effective date of the final-form rulemaking.

Chapter 5330. Psychiatric Residential Treatment Facility—Licensing

General Provisions (§§ 5330.1—5330.7)

This proposed rulemaking establishes the minimum requirements and treatment standards that must be met for a PRTF to obtain a license to serve children, youth or young adults with a behavioral health diagnosis. While this proposed rulemaking maintains much of the current licensing requirements for RTFs, it includes a new requirement that the facility be accredited to be licensed as a PRTF. The accreditation requirement is consistent with the Federal requirements to be a PRTF. See 42 CFR 441.151 (relating to general requirements). For a facility to be licensed as a PRTF under this proposed rulemaking, the facility must obtain a certificate of compliance from the Department; comply with Chapter 20 (relating to licensure or approval of facilities and agencies), Articles IX and X of the Human Services Code (62 P.S. §§ 901—1088) and 42 CFR Part 441, Subpart D (relating to inpatient psychiatric services for individuals under age 21 in psychiatric facilities or programs); and be accredited by The Joint Commission (TJC), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Council on Accreditation (COA) or another accrediting body approved by the Department.

General Requirements (§§ 5330.11—5330.21)

This proposed rulemaking codifies the current minimum standards for a facility to be certified by the Department as an RTF, including the requirement that a PRTF have written agreements with other service providers to coordinate physical health care, educational services and other community-based behavioral health services and the requirement for a detailed service description. This proposed rulemaking also includes minimum standards for PRTFs that are required by Federal regulations, including the requirement to have an emergency preparedness plan. See 42 CFR 441.184 (relating to emergency preparedness). In addition, this proposed rule-

making includes new requirements that address visits with the child's, youth's or young adult's parents, legal guardians or caregivers, as well as a new requirement for a PRTF to have a written policy to designate awake and sleeping hours.

This proposed rulemaking addresses identification and reporting of abuse; complying with laws that prevent abuse of children, youth or young adults; safeguarding a child's, youth's or young adult's funds; obtaining consent for treatment and keeping records confidential. In addition, language is added to this proposed rulemaking requiring a plan of supervision for any PRTF staff implicated in abuse and a plan for protection of the child, youth or young adult who was subject to abuse.

This proposed rulemaking contains and expands the list of serious incidents that would need to be reported to the Department. Further, this proposed rulemaking requires notification to the child's, youth's or young adult's parents, legal guardians or caregivers. Additional incidents that need to be reported to the Department and require parental notification include disruption of water, heat or electricity; use of a prohibited restrictive procedure; and any medication error. This proposed requirement is to ensure that the child's, youth's or young adult's parents, legal guardians or caregivers and the Department are better informed about serious incidents occurring at a PRTF.

Current Federal regulations require that a child's, youth's or young adult's death, serious injury or suicide attempt be reported no later than the close of business the next business day. See 42 CFR 483.374(b)(1) (relating to facility reporting). Federal regulations also require that parents, legal guardians or caregivers be informed of their child's death, serious injury or suicide attempt no later than 24 hours after the occurrence. See 42 CFR 483.374(b)(2). This proposed rulemaking strengthens the Federal requirements by requiring that incidents involving a fire that results in children, youth or young adults being displaced and incidents involving the disruption of water, heat, cooling or power also be reported to the Department. In addition, this proposed rulemaking requires that all incidents be reported to the Department and parents, legal guardians and caregivers within 12 hours after the PRTF learns of the incident.

Rights (§§ 5330.31—5330.34)

This proposed rulemaking addresses children's, youth's and young adult's rights; the rights of their parents, legal guardians or caregivers; the grievance process that must be available for children, youth or young adults, parents, legal guardians or caregivers and prohibitions on discrimination. This proposed rulemaking also expands on rights by including rights under § 5100.53 (relating to bill of rights for patients). Further, this proposed rulemaking clarifies the requirements that must be met to conduct a search of a child, youth or young adult or the child's, youth's or young adult's property.

Staffing (§§ 5330.41—5330.53)

This proposed rulemaking maintains several existing requirements for several staff. However, staff titles and qualifications are proposed to be updated and staff may need to have additional years of experience and meet new educational requirements, which are proposed to enable staff to better serve children, youth or young adults with behavioral health needs.

In addition, staff positions are added to this proposed rulemaking to meet the treatment needs of children, youth or young adults in a PRTF setting and to incorporate requirements included in the Federal regulations for PRTFs. See 42 CFR 441.156 (relating to team developing individual plan of care). New required positions include a treatment team leader, mental health professional and a registered nurse.

This proposed rulemaking also includes new requirements for the supervision of clinical and direct care staff at a PRTF. Supervision requirements are added for registered nurses, clinical directors, advanced practice professionals, licensed practical nurses, mental health professionals, mental health worker supervisors and mental health workers, including requirements for direct observation, face-to-face supervision and documentation of the supervision. These requirements are added to increase oversight of the behavioral health treatment of children, youth or young adults.

The staffing ratios for a PRTF are also proposed to be enhanced. The staff-to-child, youth or young adult ratios are proposed to be increased to ensure that children, youth or young adults receive additional oversight based on their behavioral health needs. Under this proposed rulemaking, when there are less than 12 children, youth or young adults, at least 1 PRTF supervisory staff person shall be physically present or on call to consult with PRTF staff. When there are 12 or more children, youth or young adults, at least 1 PRTF supervisory staff person shall be physically present for every 12 children, youth or young adults. The proposed increased staff ratios also ensure that direct care staff have additional support if there is an incident at the PRTF. A mental health professional is also required to be at the PRTF during awake hours to provide children, youth or young adults in a PRTF additional time to meet with the mental health professional and allow parents, legal guardians or caregivers more time to contact the mental health professional or participate in family therapy.

The training requirements for staff in this proposed rulemaking include relevant behavioral health training areas that will better prepare staff to work with children, youth or young adults with behavioral health needs. New proposed behavioral health training areas include trauma-informed care principles; cultural competency and equity; principles of child development and behavioral health diagnosis; and conditions and needs that impact the child, youth or young adult.

Physical Site (§§ 5330.61—5330.86)

This proposed rulemaking maintains the current requirements for a physical site of a PRTF, such as equipment be operable, poisonous materials be secured, proper air temperature be maintained, first aid kits be available and there be adequate space for recreational and treatment activities. This proposed rulemaking also requires the PRTF to provide accommodations, equipment and furnishings needed to meet the health and safety needs of the children, youth or young adults served. It further requires the PRTF to ensure that heat sources are inaccessible to children, youth or young adults and sanitary conditions are maintained. The PRTF must also be properly lit and ventilated and free of hazards. The PRTF must have water that is safe to drink and a functioning communication system and post emergency telephone numbers by all telephones accessible to staff. These proposed facility requirements are to protect the health, safety and wellbeing of children, youth, young adults and PRTF staff.

Fire Safety (§§ 5330.91—5330.103)

This proposed rulemaking maintains existing fire safety requirements, such as the requirement to comply with fire safety statutes, regulations and ordinances; the need to develop evacuation procedures; the requirement that exit routes be available and clear of obstruction; and the minimum standards on the location and number of detectors, alarms and fire extinguishers. This proposed rulemaking also provides that a PRTF shall safely store flammable and combustible materials, have its furnace inspected, take other measures that will prevent a fire from starting and provide local first responders with information that will be needed in case of a fire. This proposed rulemaking also includes requirements for fire drills. Lastly, this proposed rulemaking requires that carbon monoxide alarms be installed in a PRTF to prevent carbon monoxide poisoning.

Health (§§ 5330.111—5330.119)

This proposed rulemaking maintains the existing standards for the provision of medical care to children, youth or young adults, such as the PRTF must arrange for or provide necessary physical or behavioral health treatment, that each child, youth or young adult undergo an initial medical assessment when admitted to a PRTF and, if the child, youth or young adult has not had a medical examination within 12 months prior to admission to the PRTF, the child, youth or young adult must have a medical examination. Under this proposed rulemaking, PRTFs are also required to ensure that children, youth or young adults receive dental, vision and hearing examinations. Further, this proposed rulemaking requires that if the child's, youth's or young adult's health or safety is at risk, a health and safety plan be developed and that the PRTF have a medical emergency plan.

This proposed rulemaking also addresses the use of drugs, alcohol, tobacco and e-cigarettes. Requirements for e-cigarettes are added due to the growth in the use of e-cigarettes. Under this proposed rulemaking, the use or possession of drugs, alcohol, tobacco and e-cigarette products by a child, youth or young adult is prohibited.

Staff Health (§§ 5330.121—5330.123)

This proposed rulemaking includes a requirement that each PRTF staff person have undergone a health assessment within 12 months of hire and every 24 months thereafter and have a tuberculosis screening upon employment. It also requires that each PRTF staff person show proof that they are free of any serious communicable diseases that may spread through casual contact.

Nutrition (§§ 5330.131—5330.133)

This proposed rulemaking maintains the existing requirements for nutrition. In addition, it proposes a new requirement that there cannot be more than 15 hours between an evening and morning meal the following day.

Treatment Services (§§ 5330.141—5330.148)

The requirements in this proposed rulemaking for treatment services comply with the Federal requirements specified in 42 CFR Part 441, Subpart D.

This rulemaking proposes that a child's, youth's or young adult's treatment be provided under the direction of a psychiatrist, including the development and updating of a child's, youth's or young adult's treatment plan. It also provides minimum standards for individual, family and group therapy and psychoeducation groups. This proposed rulemaking expands upon planning requirements for a child's, youth's or young adult's discharge

from a PRTF. Finally, this rulemaking proposes new requirements on utilizing a level system for PRTFs that utilize such a system. Specifically, a PRTF is required to develop written policies and procedures that utilize trauma-informed care principles to provide incentives, structure, limit setting, encouragement and support to a child, youth or young adult. Further, the level system must be individualized, consistent with treatment objectives, and developmentally appropriate and cannot be punitive in nature.

Transportation (§ 5330.151)

This proposed rulemaking maintains existing requirements for safely transporting a child, youth or young adult, such as requiring compliance with applicable laws and regulations regarding the transportation of children, youth or young adults. It also proposes to increase the staff-to-child, youth or young adult ratio during transportation to allow for additional support in the event an incident occurs during transportation.

Medication (§§ 5330.161—5330.170)

This proposed rulemaking maintains existing requirements for the storage and labeling of medications, such as the use of and the administration of medications, maintenance of a medication log and documentation of medication errors. It also proposes, as a result of feedback from the stakeholder workgroup, to add requirements that address the right to refuse medication in accordance with Federal and State laws and regulations. Further, additional language is added prohibiting the use of pro re nata medication to control a child's, youth's or young adult's acute, episodic behavior in a PRTF.

Restrictive Procedures (§§ 5330.181—5330.190)

This proposed rulemaking differs significantly from existing requirements regarding restrictive procedures, including those in Federal regulations. Specifically, it proposes to prohibit the use of mechanical restraints and seclusion in both secure and nonsecure PRTFs. This rulemaking also proposes to prohibit the use of chemical restraints and exclusion in secure and nonsecure PRTFs. While it permits the use of manual restraints, this proposed rulemaking prohibits the application of a manual restraint for more than 30 minutes. The 30-minute time limit for the application of a manual restraint is more stringent than what is required by the Federal regulations (see 42 CFR 483.358(e)(2) (relating to orders for the use of restraint or seclusion)), which permit a manual restraint for no more than 4 hours if the individual being restrained is 18 years of age or older but under 21 years of age; for no more than 2 hours if the individual being restrained is 9 years of age or older but under 18 years of age; or for no more than 1 hour if the individual being restrained is under 9 years of age. These proposed additional requirements are included to eliminate the excessive use of restraints and minimize the trauma that can arise as a result of the use of a restraint.

Further, this rulemaking proposes to require that a restrictive procedure plan be developed for all children, youth or young adults. Also, it includes requirements on who can order a manual restraint that are consistent with Federal regulations. See 42 CFR 483.358. Additionally, it proposes to require PRTFs to document the use of a manual restraint and implement follow-up procedures to prevent the use of another manual restraint. These proposed additional requirements are intended to protect the health and safety of a child, youth or young adult on whom a manual restraint is used.

Finally, this proposed rulemaking includes requirements for the use of time outs that are consistent with Federal regulations (see 42 CFR 483.368 (relating to application of time out)) and incorporates the requirements in the Federal regulations for the submission of an initial and annual attestation that the PRTF is complying with the Centers for Medicare & Medicaid Services' standards on the use of restrictive procedures. See 42 CFR 483.374 (relating to facility reporting).

Secure PRTF (§§ 5330.201 and 5330.202)

This proposed rulemaking addresses the minimum standards for a secure PRTF, including the mechanisms that can be used to prohibit egress from a secure PRTF or a portion of a PRTF and the staffing requirements. The staff ratio requirements in this proposed rulemaking for secure PRTFs are to be increased because of the severe behavioral health needs of the children, youth or young adults that may be served in secure PRTFs.

Records (§§ 5330.211—5330.214)

This proposed rulemaking addresses the required content and retention of a child's, youth's or young adult's records and the requirements for PRTF records. In addition, it proposes additional content requirements that are specific to children, youth or young adults receiving behavioral health treatment in a PRTF, including the requirement that the certification of need for continued stay and the child's, youth's or young adult's psychiatric evaluations are included in the record. This rulemaking also proposes requirements for maintaining PRTF records and properly handling protected health information in accordance with Federal and State regulations, including the requirement to maintain licenses, emergency preparedness plans and policies.

Quality Assurance (§ 5330.221)

This proposed rulemaking requires PRTFs to establish and implement quality assurance practices that include evaluation of services provided to children, youth or young adults; review of manual restraints utilized and adherence to the parameters identified in the PRTF's service description. Quality assurance requirements are proposed to be consistent with the requirements for other behavioral health facilities licensed by the Department.

Waivers (§ 5330.231)

This proposed rulemaking contains requirements for a PRTF to obtain a waiver of a specific program requirement. It also addresses when the Department may revoke a waiver.

Affected Individuals and Organizations

PRTFs that are currently licensed and certified by the Department to provide behavioral health treatment to children, youth or young adults will be affected by this proposed rulemaking. Currently, 22 providers with 76 licensed programs are accredited by TJC, CARF or COA. In addition, there are 6 providers with 27 licensed programs that are not accredited by TJC, CARF or COA. A new provider intending to provide PRTF services will have to meet the requirements proposed under Chapters 1330 and 5330.

Children, youth or young adults who receive treatment in a PRTF will be affected by this proposed rulemaking. Approximately 2,564 children, youth or young adults a year receive treatment funded by MA in an RTF certified by the Department. There may be additional children, youth or young adults affected by this proposed rulemaking whose services are funded by private insurance and other resources.

Staff employed by an RTF that seeks licensure as a PRTF may be affected by this proposed rulemaking because the minimum qualifications and responsibilities of positions have been changed to meet the behavioral health needs of children, youth or young adults in PRTFs.

The Department consulted with the Mental Health Planning Council in the development of this proposed rulemaking. The Mental Health Planning Council advises the Department on issues related to mental health, substance abuse, behavioral health disorders and cross-system disability. The Department also worked with a stakeholder workgroup to develop this proposed rulemaking. The stakeholder workgroup included representation from the following: RTF providers currently certified and licensed by the Department; family advocates; family members of children, youth or young adults who received RTF services; the Mental Health Association of Pennsylvania; Rehabilitation and Community Providers Association; Pennsylvania Council of Children, Youth & Family Services; Disability Rights of Pennsylvania; National Partnership for Juvenile Services; behavioral health managed care organizations; and county mental health representatives.

The stakeholder workgroup held an initial face-to-face meeting on February 11, 2020. After the onset of the novel coronavirus (COVID-19) pandemic, the workgroup held virtual meetings on June 11, 2020, June 17, 2020, and July 31, 2020. The stakeholder workgroup discussed staff qualifications and training, treatment planning, administering medication, ensuring health and safety and the use of restrictive procedures. A summary of each meeting was provided to workgroup members. Workgroup members were encouraged to ask questions, make suggestions or share concerns by means of e-mail.

The Department also consulted individually with family advocates; family members of children, youth or young adults who received RTF services; medical directors of behavioral health managed care organizations; psychiatrists; and other offices within the Department about whether there is a clinical need for secure treatment settings and determined that there are circumstances where there is a clinical need for children, youth or young adults to receive treatment in a secure PRTF. Because the Department is committed to ensuring active participation from family members whose children are currently receiving treatment in an RTF, the Department met with family members on March 19, 2021, June 25, 2021, September 1, 2021, and September 10, 2021.

The Department updated interested parties and organizations throughout the drafting of this proposed rulemaking to ensure a transparent process. Comments and feedback received from interested parties and organizations were considered in the drafting process.

Accomplishments and Benefits

This proposed rulemaking benefits children, youth or young adults receiving services in a PRTF by making changes that are intended to result in decreases in lengths of stay and reductions in readmissions. It encourages a robust commitment to trauma-informed principles; emphasizes active engagement of children, youth or young adults in their treatment; and promotes planning for discharge to begin upon admission.

This proposed rulemaking also benefits children, youth or young adults who receive treatment in a PRTF by increasing staff ratios, which will allow for increased supervision of children, youth or young adults and provides children, youth or young adults with additional

access to mental health professionals during awake hours. Requiring mental health professionals to be present at the PRTF during all awake hours will increase the availability of clinicians to respond to immediate treatment needs and allow for more opportunities for family therapy. Increased staffing also provides families with additional opportunities to contact a staff member to discuss any treatment concerns that they may have regarding their child. In addition, there will be more clinical staff onsite to provide support and guidance to direct care staff.

Children, youth or young adults will also benefit because this proposed rulemaking establishes minimum standards for the frequency and duration of individual, group and family therapy and psychoeducation groups, which will improve the behavioral health treatment children, youth or young adults receive while in a PRTF. Furthermore, by setting minimum training standards and requiring staff training in trauma-informed care, child development, cultural competency, diversity, equity and inclusion, this proposed rulemaking will ensure that staff are appropriately trained. The increased staff qualifications proposed under this rulemaking will also help ensure that services are delivered by qualified staff, which will result in services that meet the clinical needs of the children, youth or young adults on a consistent and therapeutic basis.

This proposed rulemaking will also benefit children, youth or young adults and their parents, legal guardians and caregivers because it changes the requirements for admission to a secure PRTF. Specifically, it does not require that a child, youth or young adult be alleged delinquent or adjudicated delinquent to be admitted to a secure PRTF. Instead, admission to a secure PRTF will depend on the child's, youth's or young adult's medically recommended treatment needs. In addition, this rulemaking proposes more stringent staff ratios for secure PRTFs, which will protect the safety of children, youth and young adults who receive services in a secure PRTF.

Finally, this proposed rulemaking also benefits children, youth and young adults by expanding upon the list of incidents to be reported and significantly reducing the length of time a manual restraint may be applied to a child, youth or young adult. In addition, it protects the health and safety of children, youth and young adults receiving services in a PRTF by prohibiting the use of seclusion, exclusion and prone, chemical and mechanical restraints.

This proposed rulemaking will benefit parents, legal guardians and caregivers of children, youth or young adults that receive treatment in a PRTF by setting a standard for family therapy and promoting the participation of parents, legal guardians and caregivers in treatment and discharge planning. It will also benefit PRTFs because it will allow for a more streamlined and codified approach to licensing.

Fiscal Impact

Because each RTF that is currently licensed and certified by the Department has a unique staffing, training and organizational structure, the Department does not have sufficient information to determine the fiscal impact this proposed rulemaking would have for each individual RTF. Therefore, the Department's fiscal analysis assumes that all RTFs are currently meeting, and not exceeding, the minimum licensure standards and the requirements to be certified by the Department to provide medically necessary behavioral health treatment. If providers incur

additional costs as a result of the new requirements in this proposed rulemaking, allowable costs may be submitted for payment through the cost reporting process. The Department's behavioral health managed care organizations' capitation rates and MA provider rates are anticipated to be adjusted to reflect the increased PRTF costs.

This proposed rulemaking will result in an annual cost to the MA program of approximately \$18,782,000 (\$9,007,000 in State funds). Based on the anticipated time frame for this proposed rulemaking to be promulgated, the cost for the first fiscal year will be half of the total annual cost for subsequent years after promulgation. This will amount to approximately \$9.42 million (\$4.518 million in State funds) in the first year. These costs include MA payments for room and board expenses for children, youth or young adults residing at previously nonaccredited RTFs, payment for costs PRTFs incur to comply with new requirements in this proposed rulemaking, costs for increased staffing in secure PRTFs required as a result of this proposed rulemaking and the cost to the Department to hire additional staff to carry out the work associated with licensing PRTFs.

This rulemaking proposes to require accreditation to be licensed as a PRTF. Nonaccredited RTFs certified by the Department that seek to become PRTFs will incur the cost of becoming accredited. The cost to become accredited depends upon the accreditation body selected by the nonaccredited RTF as well as the size of the provider. The cost for accreditation can be up to \$10,000.

In addition, if a child, youth or young adult who is eligible for MA receives medically necessary behavioral health treatment in an accredited RTF that is certified by the Department, MA will pay for the child's, youth's or young adult's behavioral health treatment and for room and board. However, if the child, youth or young adult is receiving medically necessary behavioral health treatment in a nonaccredited RTF certified by the Department, MA will only pay for the child's, youth's or young adult's medically necessary behavioral health treatment. The cost for the room and board is covered by another funding source, such as local governments. Because all PRTFs are proposed to be accredited under this rulemaking, it is anticipated that MA payment for room and board expenses for the six nonaccredited RTFs certified by the Department that are anticipated to convert to PRTFs will result in an annual cost to the MA program of approximately \$10 million (\$4.78 million in State funds). The annual cost was determined by breaking out the room and board component and averaging it to \$95.22 per day. The room and board component is multiplied by the number of billed bed days for current nonaccredited RTFs certified by the Department, which was 103,321 billed bed days.

RTFs that seek to be licensed as PRTFs may also incur costs related to changes in staff qualifications, staff responsibilities, staff ratios and staff training. The exact cost for each RTF is dependent upon the RTF's current treatment modalities, organizational structure, staff qualifications and supervision and training requirements. Additionally, PRTFs may incur the cost of having an automated external defibrillator (AED) on grounds. Should a PRTF not currently have an AED on grounds, the cost to purchase one can range from \$1,500 to \$2,500 depending on the type of AED purchased. The Department anticipates that most of the RTFs that seek to be licensed as PRTFs already have an AED on the grounds.

This rulemaking proposes changes to the existing staff requirements to allow PRTFs to better meet the behav-

ioral health needs of the children, youth or young adults served. While this proposed rulemaking maintains the structure of a director, childcare worker and childcare worker supervisor, the requirements for these positions are proposed to be updated.

The proposed requirements for the director position are less stringent under § 5330.46 (relating to program director) than existing requirements. Specifically, this proposed rulemaking allows a program director with a master's degree to have 1 year less work experience and a program director with a bachelor's degree to have 2 years less work experience. This proposed rulemaking also allows an individual with an associate's degree and 3 years of work experience or an individual with a high school diploma or equivalent and 5 years of work experience to become a program director.

Under this proposed rulemaking, the childcare worker, which is identified as a mental health worker in § 5330.49 (relating to mental health worker), has different qualifications. Specifically, this proposed rulemaking requires mental health workers to have a high school diploma or the equivalent of a high school diploma and 1 year of experience working directly with children, youth or young adults.

The education and experience requirements for a childcare supervisor, which is referred to as mental health worker supervisor under § 5330.50 (relating to additional staff positions), are also less stringent than current requirements. Specifically, this proposed rulemaking allows individuals with an associate's degree to have 1 year less work experience. This proposed rulemaking also allows individuals with a high school diploma or equivalent and 3 years of work experience to become mental health worker supervisors.

This proposed rulemaking also requires additional positions. The additional positions added under this proposed rulemaking meet Federal requirements for PRTFs and better support children, youth or young adults with behavioral health needs receiving medically necessary treatment in a PRTF. The new positions include a medical director, treatment team leader, clinical director, mental health professional and registered nurse.

A medical director may serve as the treatment team leader and clinical director as long as the requirements of each position are met. If an RTF needs to hire a medical director, treatment team leader, clinical director, mental health professional or registered nurse to meet the requirements of this proposed rulemaking, the approximate average annual cost for each position is as follows: \$289,300 for a medical director or a treatment team leader; \$66,450 for a clinical director, unless a physician assumes the role (which would increase the salary); \$51,500 for a mental health professional, unless the individual is a licensed practitioner (which would increase the salary); and \$66,500 for a registered nurse.

Finally, this proposed rulemaking allows a PRTF to also utilize a licensed practical nurse or an advanced practice professional. Should an RTF opt to employ a licensed practical nurse, the average annual salary is approximately \$47,100.

An advanced practice professional may either be licensed as a physician assistant or a certified registered nurse practitioner. Should an RTF opt to employ a physician assistant or a certified registered nurse practitioner, the average annual salary is approximately \$110,140 and \$120,550, respectively.

The staff ratio requirements in this proposed rulemaking are more stringent than what is currently required. During the stakeholder workgroup meetings, many RTF providers stated that staff ratios exceed existing requirements and meet the staff ratio requirements in this proposed rulemaking. RTF providers that are not currently exceeding the minimum staff ratio requirements will incur costs under this proposed rulemaking.

Currently, 1 childcare worker is required for every 8 children, youth or young adults during awake hours and 1 childcare worker for every 16 children, youth or young adults during sleeping hours. This proposed rulemaking requires 1 mental health worker for every 6 children, youth or young adults during awake hours and 1 mental health worker for every 12 children, youth or young adults during awake hours.

Using a 16-bed provider as an example, a PRTF provider that is not currently exceeding the minimum staffing requirements will need to hire two additional mental health workers at an average salary of approximately \$35,700. The total additional cost to the provider would be \$71,400.

It is anticipated that RTFs that participate in the MA program will seek payment from the cost reporting process for the costs related to changes to staffing requirements identified previously, which will result in an annual cost to the MA program of approximately \$7 million (\$3.34 million in State funds).

While the number of hours of annual training staff must receive prior to working with children, youth or young adults is being maintained, this proposed rulemaking changes who must complete training and some of the training topics. Under this proposed rulemaking, all PRTF staff will be required to complete initial and annual training hours. In addition, additional training topics are proposed to be added. Some of the additional training topics include cultural competency and equity, child development, diagnosis and treatment, and trauma-informed care principles. These additional training topics are proposed as a result of feedback from workgroup members and to support the Commonwealth's initiative of becoming a trauma-informed and healing-centered state. If an RTF does not provide training on the additional topics and does not have the resources to provide training on the additional training topics, the cost for the additional trainings would be approximately \$1,620. This cost was determined by factoring in the cost for training staff in the additional training topics and an assumption of 35% staff turnover.

This proposed rulemaking includes requirements for secure PRTFs. There are currently no secure PRTFs in this Commonwealth. An MA-enrolled provider that chooses to operate a secure PRTF will incur costs to meet the staffing requirements.

The staff ratio requirements for secure PRTFs are more stringent than the requirements for non-secure PRTFs. This proposed rulemaking requires that secure PRTFs have one mental health worker for every four children, youth or young adults during awake hours and one mental health worker for every eight children, youth or young adults during sleeping hours.

Existing RTFs that choose to transition to secure PRTFs and do not employ staff in excess of current requirements will need to hire additional mental health workers. Using a 16-bed provider as an example, an RTF will need to hire three additional mental health workers

at an average salary of approximately \$35,700. The total additional cost to the provider would be \$107,100. Additional costs as a result of compliance with the staff-ratio requirements for a secure PRTF may be submitted for payment through the cost reporting process. MA provider rates and capitation rates are anticipated to be adjusted as needed to include the increased costs related to staff ratio requirements. The Department assumes that four facilities that are not currently providing an RTF level of care may develop secure PRTFs, which will result in an annual cost to the MA program of approximately \$1 million (\$480,000 in State funds).

This proposed rulemaking imposes additional paperwork requirements, which are discussed as follows. Should an RTF not meet the requirements of this proposed rulemaking, the one-time cost for the RTF to develop the documents will be approximately \$2,763. The cost is based on an average hourly rate of \$34.54 for a program director needing an estimated 80 hours to develop the documents.

As for quality assurance plans, RTFs accredited by entities such as TJC, CARF or COA are currently required by these entities to complete quality improvement plans. Given the common practice of utilizing quality assurance activities, increased costs to the MA program to implement this requirement are expected to be minimal.

As noted previously, additional costs incurred by an RTF to comply with this proposed rulemaking may be submitted for payment through the cost reporting process. Behavioral health managed care organizations' capitation rates and MA provider rates are anticipated to be adjusted to reflect the increased costs.

The Department will need to hire six additional human services program representative staff positions to carry out the work associated with licensing PRTFs. It is anticipated that these added positions will result in an annual cost to the MA program of approximately \$782,000 (\$407,000 in State funds).

The implementation of the requirements in this proposed rulemaking may result in improved outcomes, which may result in shorter lengths of stay at a PRTF and less utilization of more costly higher levels of care, such as hospitalizations. The Department, however, cannot estimate the amount of savings resulting from improved outcomes because the Department cannot determine the potential decrease in the utilization of higher levels of care or the length of stay as a result of the requirements in this proposed rulemaking.

In addition, there may be a decrease in costs to local governments of approximately \$4.78 million as a result of this proposed rulemaking because they will no longer be paying for the cost of room and board for children, youth or young adults being served in nonaccredited RTFs certified by the Department.

Paperwork Requirements

While proposed Chapter 5330 maintains most of the current paperwork requirements for RTFs that are licensed and certified by the Department, it also includes new documentation requirements. This proposed rulemaking requires PRTFs to develop written policies and procedures on the following:

- Identification and reporting of abuse and plan of supervision for staff implicated in abuse.
- Reporting, investigating and management of reportable incidents.

- Reporting, investigating and management of recordable incidents.
- Management and disbursement of a child's, youth's or young adult's funds.
- Visits with legal guardians, parents or caregivers.
- Rights of children, youth or young adults and their parents, legal guardians or caregivers.
- Grievances.
- Searches of a child, youth or young adult or the child's, youth's or young adult's personal property.
- Designated awake and sleeping hours.
- Supervision of PRTF staff.
- Monitoring of initial and annual staff training.
- Use of hazardous equipment.
- Fire safety monitoring if a smoke detector, fire alarm or carbon monoxide detector becomes inoperative.
- Inclusion of the assessment of health and safety risks in the initial medical assessment.
- Use of a level system.
- Handling of discontinued and expired medication.
- Debriefing after a manual restraint.

In addition, this proposed rulemaking will require PRTFs to enter into written agreements to coordinate services with other service providers and to develop a written quality assurance plan and generate annual quality assurance reports.

Chapter 1330 will not result in additional paperwork for providers of PRTF services.

This proposed rulemaking will also not require children, youth or young adults who receive treatment in a PRTF or their parents, legal guardians or caregivers to complete additional reporting, recordkeeping or other paperwork requirements.

Effective Date

With the exception of the amendment to § 3800.3 (relating to exemptions), this proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. The amendment to § 3800.3 will be effective 12 months after publication of the final-form rulemaking.

The Department will require both accredited and non-accredited RTFs certified by the Department to comply with this proposed rulemaking 12 months after promulgation.

The MA program will continue to pay for medically necessary behavioral health treatment and room and board for eligible children, youth or young adults provided by an accredited RTF certified by the Department for 12 months after promulgation of the final-form rulemaking.

RTFs currently licensed and certified by the Department must obtain a new license under Chapter 5330 within 12 months after promulgation of the final-form rulemaking. The Department will issue licenses in accordance with each RTF's license renewal date.

New facilities seeking to provide behavioral health residential treatment to children, youth or young adults shall obtain a license under Chapter 5330 prior to operating a PRTF.

Public Comment

Interested persons are invited to submit e-mail comments, suggestions or objections regarding this proposed rulemaking to the Department at ra-pwprtfregs@pa.gov.

If comments, suggestions or objections regarding this proposed rulemaking cannot be e-mailed, interested persons may submit written comments, suggestions or objections to Donald Hindmarsh, Bureau of Children's Behavioral Health Services, Commonwealth Towers, 11th Floor, P.O. Box 2675, Harrisburg PA 17105-2675.

Comments, suggestions or objections must be submitted within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-555 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users), (844) 308-9292 (Speech-to-Speech) or (844) 308-9291 (Spanish).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 2, 2024, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Health and Human Services Committee of the Senate and to the chairperson of the Human Services Committee of the House of Representatives. A copy of this material is available to the public upon request.

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

VALERIE A. ARKOOSH,
Secretary

Fiscal Note: 14-555. Under section 612 of The Administrative Code of 1929 (71 P.S. § 232), (1) General Fund;

(7) General Government Operations; (2) Implementing Year 2023-24 is \$0; 1st Succeeding Year 2024-25 is \$218,000; 2nd Succeeding Year 2025-26 through 5th Succeeding Year 2028-29 are \$407,000; (4) 2022-23 Program—\$120,016,000; 2021-22 Program—\$120,570,000; 2020-21 Program—\$106,235,000;

(7) MA—Capitation; (2) Implementing Year 2023-24 is \$0; 1st Succeeding Year 2024-25 is \$4,235,000; 2nd Succeeding Year 2025-26 through 5th Succeeding Year 2028-29 are \$8,471,000; (4) 2022-23 Program—\$3,481,000,000; 2021-22 Program—\$4,557,000,000; 2020-21 Program—\$3,060,000,000;

(7) MA—Fee For Service; (2) Implementing Year 2023-24 is \$0; (3) 1st Succeeding Year 2024-25 is \$64,000; 2nd Succeeding Year 2025-26 through 5th Succeeding Year 2028-29 are \$129,000; (4) 2022-23 Program—\$589,143,000; 2021-22 Program—\$644,059,000; 2020-21 Program—\$808,350,000;

(8) recommends adoption. Implementation and programmatic costs are expected to occur in the next fiscal year and thus funds will be included in the budget.

Annex A

TITLE 55. HUMAN SERVICES

PART III. MEDICAL ASSISTANCE MANUAL

(*Editor's Note:* Chapter 1330 is proposed to be added and is printed in regular type to enhance readability.)

**CHAPTER 1330. PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY
GENERAL PROVISIONS**

- Sec.
- 1330.1. Policy.
- 1330.2. Definitions.

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- 1330.11. Scope of benefits.

PROVIDER PARTICIPATION

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- 1330.22. Ongoing responsibilities of a PRTF.
- 1330.23. Change of ownership.

PAYMENT

- 1330.31. General payment.
- 1330.32. Conditions for payment.
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- 1330.34. Allowable costs.
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- 1330.36. Cost allocation for multiple programs.
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- 1330.38. Nonallowable costs.
- 1330.39. Annual cost reporting and independent audit.
- 1330.40. Rate setting.
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- 1330.42. Billing requirements.
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UTILIZATION REVIEW

- 1330.51. Scope of claims review procedures.

ADMINISTRATIVE SANCTIONS

- 1330.61. Sanctions, denied payments and overpayments.

PROVIDER RIGHT OF APPEAL

- 1330.71. Provider right of appeal.

GENERAL PROVISIONS

§ 1330.1. Policy.

The MA program provides payment for behavioral health treatment when the services are medically necessary and provided to children, youth or young adults with a behavioral health diagnosis by a licensed PRTF enrolled in the MA program.

§ 1330.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly demonstrates a different meaning:

Caregiver—An individual with the primary responsibility for the care and supervision of a child, youth or young adult.

Child—An individual under 14 years of age.

Cost center—A group of services or staff, or both, or another unit or type of activity into which functions of a PRTF are divided for purposes of expense assignment and allocations.

Cost report—A data collection tool issued by the Department to collect expense and utilization information from a PRTF that may include supplemental schedules or addenda as requested by the Department.

Day of care—Room, board and behavioral health services calculated on a 24-hour day basis using a midnight census hour.

Department—The Department of Human Services of the Commonwealth.

Elopement—When a child, youth or young adult leaves the premises of a PRTF or a location without staff approval.

Fiscal year—The period of time beginning July 1 and ending June 30 of the following year.

Hospital-reserved bed day—A day when a child, youth or young adult who is expected to return to the PRTF is approved for and admitted to an acute care general hospital or a psychiatric or rehabilitation hospital.

MA—Medical Assistance.

PRTF—psychiatric residential treatment facility—A residential facility that provides services to treat the behavioral health needs of children, youth or young adults under the direction of a psychiatrist.

Parent—The biological or adoptive father or mother of a child, youth or young adult.

Related party—An individual or organization that is associated or affiliated with or has control of or is controlled by a PRTF. Control includes the power to influence or direct the actions or policies of another. The term does not include a child, youth or young adult.

Secure PRTF—A PRTF from which egress is prohibited.

Staff—Individuals employed or contracted by a PRTF on a full-time or part-time basis. Staff includes temporary staff, volunteers and interns.

Treatment plan—An individualized and detailed written plan of treatment services specifically tailored to address a child's, youth's or young adult's needs.

Treatment team—A group of individuals who are led by a treatment team leader and includes the PRTF staff directly involved in the child's, youth's or young adult's treatment, and the child, youth or young adult. The treatment team may also include the child's, youth's or young adult's parent, legal guardian or caregiver; and any individuals chosen by the child, youth or young adult or the parent, legal guardian or caregiver.

Treatment team leader—A board-certified or board-eligible psychiatrist who has the overall responsibility of directing the child's, youth's or young adult's treatment.

Visit—When a child, youth or young adult is under the approved temporary supervision of an individual at the individual's residence or in the community and not under the supervision of PRTF staff.

Young adult—An individual 18 years of age or older but under 21 years of age or an individual who is 22 years of age but was admitted to the PRTF prior to turning 21 years of age.

Youth—An individual 14 years of age or older but under 18 years of age.

SCOPE OF BENEFITS

§ 1330.11. Scope of benefits.

Children, youth and young adults who are MA recipients with a behavioral health diagnosis may receive medically necessary services in a PRTF.

PROVIDER PARTICIPATION**§ 1330.21. Participation requirements for a PRTF.**

To participate in the MA program, a PRTF shall:

(1) Comply with the special provisions applying to psychiatric hospitals set forth in 42 CFR 482.60 (relating to special provisions applying to psychiatric hospitals).

(2) Comply with the participation requirements in Chapter 1101 (relating to general provisions).

(3) Be licensed as a PRTF in accordance with Chapters 20 and 5330 (relating to licensure or approval of facilities and agencies; and psychiatric residential treatment facility).

(4) Enter into a written provider agreement with the Department to provide PRTF services.

(5) Be enrolled in the MA program by the Department.

§ 1330.22. Ongoing responsibilities of a PRTF.

(a) A PRTF shall comply with all of the following requirements:

(1) The record keeping and onsite access requirements in § 1101.51(e) (relating to ongoing responsibilities of providers).

(2) The record keeping requirements for child, youth or young adult records in § 5330.212 (relating to child, youth or young adult record).

(3) The record keeping requirements for PRTF records in § 5330.213 (relating to PRTF record).

(b) A PRTF shall retain complete, accurate, legible and auditable clinical, medical and fiscal records.

§ 1330.23. Change of ownership.

(a) If a PRTF changes ownership and the new owner wants to continue to participate in the MA program, the PRTF shall submit an application, on the form provided by the Department, and meet the requirements in § 1330.21 (relating to participation requirements for a PRTF).

(b) When a PRTF changes ownership, the Department will approve participation in the MA program by the new owner if the Department determines the new owner to be eligible to participate in the MA program under § 1330.21. The new ownership shall meet Federal and State laws and regulations prior to the Department approving participation in the MA program.

(c) When a PRTF changes ownership, the PRTF shall submit an attestation that complies with § 5330.190 (relating to attestation).

PAYMENT**§ 1330.31. General payment.**

(a) Except as provided in subsection (b), the MA program will pay for medically necessary services provided by a PRTF to a child, youth or young adult who is an MA recipient subject to the conditions and limitations in this chapter and Chapter 1101 (relating to general provisions).

(b) The MA program will pay for medically necessary services provided to a child, youth or young adult who is an MA recipient by a residential treatment facility licensed under Chapter 3800 (relating to child residential and day treatment facilities) and certified by the Department as of [insert the effective date of the final-form rulemaking] for 12 months after [insert the effective date of the final-form rulemaking].

(c) If a PRTF is rendering services to a young adult before the young adult turns 21 years of age, the Department will continue to pay for services if they are medically necessary and the young adult is under 22 years of age.

(d) The MA program will not pay for services provided by a PRTF that exclusively serves children, youth or young adults who are alleged delinquent or adjudicated delinquent.

§ 1330.32. Conditions for payment.

(a) MA will pay a PRTF if all of the following conditions are met:

(1) A psychiatric evaluation of the child, youth or young adult that is a result of a comprehensive in-person diagnostic examination has been completed. The psychiatric evaluation shall:

(i) Include a behavioral health diagnosis.

(ii) Indicate that a PRTF is recommended and medically necessary.

(iii) Address all of the following:

(A) If ambulatory care provided in the community meets the service needs of the child, youth or young adult.

(B) If treatment of the child's, youth's or young adult's behavioral health needs requires services in a PRTF under the direction of a psychiatrist.

(C) If services in a PRTF are needed to improve the child's, youth's or young adult's behavioral health needs or prevent further regression.

(2) The psychiatric evaluation is reviewed by an independent team that includes a psychiatrist who meets all of the following requirements:

(i) Has competence in the diagnosis and treatment of mental illness, preferably in child psychiatry.

(ii) Has knowledge of the child's, youth's or young adult's treatment needs.

(3) The independent team is independent of the psychiatrist who completed the psychiatric evaluation and the PRTF that is being recommended.

(4) The independent team certifies all of the following:

(i) Ambulatory care provided in the community does not meet the service needs of the child, youth or young adult.

(ii) Treatment of the child's, youth's or young adult's behavioral health needs requires services in a PRTF under the direction of a psychiatrist.

(iii) Services in a PRTF are needed to improve the child's, youth's or young adult's behavioral health needs or prevent further regression.

(b) The child's, youth or young adult's treatment team leader shall review the need for continued PRTF level of care every 30 days and certify that the child, youth or young adult continues to meet the requirements in subsection (a)(4).

§ 1330.33. Limitations on payment.

(a) MA will pay for hospital-reserved bed days for a PRTF that is currently participating in MA as follows:

(1) Payment will only be made to a PRTF to reserve a bed when a child, youth or young adult is hospitalized if the child, youth or young adult is admitted to a licensed hospital or hospital unit accredited as a hospital, the

hospitalization occurs during the child's, youth's or young adult's PRTF stay and the child, youth or young adult is expected to return to the PRTF upon discharge from the hospital.

(2) Payment for hospital-reserved bed days is limited to 15 cumulative days per calendar year for each child, youth or young adult, regardless of whether the child, youth or young adult was in continuous or intermittent treatment at one or more PRTFs during the calendar year.

(3) Payment for hospital-reserved bed days begins on the date of a child's, youth's or young adult's admission to the hospital and will be paid at the rate of 1/3 of the PRTF's approved per diem payment rate.

(b) MA will pay for up to 2 days of elopement from a PRTF per calendar year for each child, youth or young adult.

(c) MA will pay for a day of care if the child's, youth's or young adult's bed is reserved while the child, youth or young adult is on a visit.

(d) MA will not pay a PRTF for the following:

(1) A day of care during which a child, youth or young adult was absent from the PRTF for one of the following reasons:

(i) Elopement, unless the absence meets the criteria in subsection (b).

(ii) Leaving the PRTF against medical advice.

(iii) Hospitalization, unless the hospitalization meets the criteria in subsection (a).

(iv) Visits, unless the visit meets the criteria in subsection (c).

(2) Admissions and days of care that do not meet the requirements of this chapter.

(3) The day of discharge or transfer to another facility.

§ 1330.34. Allowable costs.

The Department uses Medicare principles as established by the Social Security Act (42 U.S.C. §§ 301—1397mm) and Federal regulations and instructions as a basis for determining what cost items are allowable for the purposes of MA reimbursement.

§ 1330.35. Income and offsets to allowable costs.

In an annual cost report, the PRTF shall report income from the following as sources to offset allowable costs in the determination of operating costs:

(1) Payments received from a youth or young adult or a child's, youth's or young adult's parent, legal guardian or caregiver.

(2) Gifts, donations, endowments, bequests and contributions restricted by the donor for allowable costs.

(3) Refunds and cash discounts.

(4) Grants designated for allowable costs.

(5) Income from the National School Lunch Program.

(6) Income from space rental, vending machines and similar items.

(7) Fundraising efforts restricted for allowable costs.

(8) Interest earned on items specified in paragraphs (1)—(7).

§ 1330.36. Cost allocation for multiple programs.

(a) If a provider operates a PRTF as well as other types of programs, the provider shall document how various costs are allocated between the multiple programs.

(b) The account of the cost allocation must include all of the following:

(1) Salary costs for individuals responsible for more than one program.

(2) Staff fringe benefits for individuals responsible for more than one program.

(3) Rental costs that apply to more than one program.

(4) Motor vehicles that are used by more than one program.

(5) Other related expenses shared by more than one program.

§ 1330.37. Related-party transactions.

(a) A PRTF shall include in its allowable costs, services and supplies furnished to the PRTF by a related party at an amount equal to the cost of such services and supplies to the related party.

(b) The cost of services and supplies procured by a PRTF through a related-party transaction may not exceed the cost of comparable services and supplies if purchased elsewhere.

(c) The related party's costs include reasonable costs incurred in the furnishing of services and supplies to the PRTF.

§ 1330.38. Nonallowable costs.

(a) The following costs are excluded from the operating costs described in § 1330.34 (relating to allowable costs) and are not included in a PRTF's per diem rate:

(1) Costs for legal services relating to litigation against the State, including administrative appeals, if the litigation is ultimately decided in favor of the State.

(2) Administrative costs of more than 13% of allowable MA costs.

(3) Costs for which Federal financial participation is prohibited by statute.

(4) Costs for services not provided by a PRTF to a child, youth or young adult residing in the PRTF.

(5) Education costs associated with a child's, youth's or young adult's individual educational plan, individual family service plan or treatment plan which are to be paid for by the child's, youth's or young adult's school district.

(6) Costs related to a PRTF staff's medical education, residency programs or education field placements.

(7) Costs for a service if payment is available from another public agency, insurance or health program or any other source.

(8) Expenses not related to providing services to MA recipients.

(9) Costs associated with the following:

(i) Advertising, excluding employment opportunities.

(ii) Charitable contributions.

(iii) Staff recognition, such as gifts, awards or dinners.

(iv) Staff social functions, such as picnics or athletic teams.

(v) Nonstandard fringe benefits.

- (vi) Fundraising and marketing.
- (vii) Life insurance for officers and directors of the governing board, including life insurance premiums necessary to obtain mortgages and other loans.
- (viii) Membership fees for social, fraternal and other organizations involved in activities unrelated to the program or an organization defined as a lobbying group under 65 Pa.C.S. Chapter 13A (relating to lobbying disclosure).
- (ix) Meals for visitors.
- (x) Political activities.
- (xi) Related-party rental, leases or other payments that exceed the provision outlined in § 1330.37 (relating to related-party transactions).
- (xii) Reorganization costs.
- (xiii) Federal, State or local income and excess profit taxes.
- (xiv) Taxes from which exemptions are available to a PRTF.
- (xv) Bad debts and contractual adjustments.
- (xvi) Barber and beautician services.
- (xvii) Children's, youth's or young adult's allowances.
- (xviii) Clothing and shoes for children, youth or young adults receiving services in the PRTF.
- (xix) Living expenses for live-in staff, including lodging, meals and personal laundry.
- (xx) Meals for staff, except for meals provided during training activities documented in a child's, youth's or young adult's treatment plan.
- (xxi) Penalties, fines or late charges assessed by any source, whether or not related to a PRTF.
- (xxii) Personal hygiene items for children, youth or young adults receiving service in the PRTF.
- (xxiii) Personal travel for staff, including personal use of a PRTF vehicle.
- (xxiv) Transportation and living costs associated with onsite visits by parents, legal guardians or caregivers.
- (xxv) Salaries for PRTF staff no longer employed by the PRTF.
- (xxvi) Free care or discounted services.
- (xxvii) Personal radio, television, Internet and telephone service.
- (xxviii) Direct and indirect costs related to nonallowable cost centers including all of the following:
 - (A) Gift, flower and coffee shops.
 - (B) Homes for administrators or clergy.
 - (C) Convent areas.
 - (D) Nurses' quarters.
- (xxix) Pennsylvania capital stock and franchise tax.
- (xxx) Collection expenses associated with bad debts.
- (xxxi) Travel expenses for members of the governing body unrelated to the PRTF's program.
- (xxxii) Vocational rehabilitation services.
- (xxxiii) Parties and social activities not related to providing care to children, youth or young adults receiving services in the PRTF.

(xxxiv) Recreation costs not related to providing care to children, youth or young adults receiving services in the PRTF.

(xxxv) Charity, in-kind and courtesy allowances.

(xxxvi) Extraordinary costs related to, or precipitated by, bankruptcy.

(b) The following services are not included in the per diem rate and may not be included as a cost for the PRTF:

- (1) Health care, including dental, vision and hearing care, which is not related to the child's, youth's or young adult's behavioral health needs.
- (2) Prescription drugs.
- (3) Ambulance services.
- (4) Methadone maintenance.
- (5) Diagnostic procedures or laboratory tests.
- (6) Inpatient hospitalization.
- (7) Emergency room visits.
- (8) Diagnostic or therapeutic procedures for experimental, research or educational purposes.
- (9) Experimental or investigative procedures or clinical trial research and services that are not in accordance with customary standards of medical practice or are not commonly used.

(c) The Department will not contribute to a return on equity for proprietary programs.

(d) Costs that are not recognized as allowable costs in a fiscal year may not be carried forward or backward to other fiscal years for inclusion in allowable costs.

§ 1330.39. Annual cost reporting and independent audit.

(a) Residential treatment facilities that are licensed under Chapter 3800 (relating to child residential and day treatment facilities) and certified by the Department as of [insert the publication date of the final-form rulemaking] shall provide a projected cost report to the Department within 3 months of [insert the publication date of the final-form rulemaking].

(b) A PRTF shall submit to the Department an annual cost report and an independent audit performed by an independent public accountant.

(c) If costs have been allocated between programs and supporting services, disclosure shall be made in the independent audit and in accordance with generally accepted accounting principles.

(d) A PRTF shall disclose in the independent audit the existence of any affiliate and the affiliate's relationship to the PRTF, including the nature of any financial transaction between the affiliate and the PRTF.

(e) A provider that operates PRTFs in different locations but uses a consolidated financial report shall designate cost centers for each location in the independent audit. Information accompanying the independent audit shall include the basis used to allocate income and expenses to each location.

(f) A PRTF shall submit an annual cost report on a form specified by and in accordance with the instructions provided by the Department.

(g) The annual cost report submitted to the Department shall be prepared on an accrual basis.

(h) A PRTF shall identify allowable services, administration, ancillary and related organization costs based on financial and statistical records maintained by the PRTF. The cost information contained in the annual cost report shall be current and accurate.

(i) The annual cost report must cover a fiscal period of 12 consecutive months, from July 1 to June 30, except as noted in subsection (k).

(j) The annual cost report for the preceding fiscal year ending June 30 must be submitted to the Department by September 30 of that year.

(k) When a PRTF begins operating after the start of the fiscal year, the cost report must cover the period from the date of approval for participation in the MA program by the Department to June 30.

(l) The Department may adjust costs reported in the annual cost report as follows:

(1) Costs may be adjusted based upon the findings of current or closed audits, cost settlements, approved service descriptions or any information relevant to the costs being adjusted.

(2) The Department will inform the PRTF in writing if the annual cost report is adjusted.

(3) If the Department does not inform a PRTF of adjustments to the annual cost report in writing within 180 days of receiving the annual cost report, the annual cost report submitted by a PRTF will be accepted by the Department as submitted.

§ 1330.40. Rate setting.

(a) Per diem rates will be established as follows:

(1) A cost report submitted by a PRTF in accordance with § 1330.39 (relating to annual cost reporting and independent audit), as adjusted by the Department, if necessary, will be used for the calculation of the PRTF's per diem rate.

(2) A per diem rate for a PRTF will be established by dividing the total projected operating costs by the number of days of care reported in the annual cost report subject to a minimum of 85% of the maximum number of days based on the number of beds specified on the PRTF's certificate of compliance.

(3) The total actual days of care provided include all days of service provided plus hospital-reserve bed days as specified by § 1330.33 (relating to limitations on payment). Reserved beds counted as actual days of service may not be filled.

(4) The total projected operating cost will be calculated as follows:

(i) For a new PRTF, the total MA allowable costs from the budgeted annual cost report, including adjustments for income and nonallowable, limited and excluded costs, as determined by the Department are used to determine projected operating costs.

(ii) For an existing PRTF, an annual cost report filed September 30 as specified in § 1330.39, including adjustments for income and nonallowable, limited and excluded costs, as determined by the Department is used to determine projected operating costs.

(iii) Cost depreciation on capital assets, limited to buildings and fixed equipment, and interest on capital indebtedness is added to the total operating cost to obtain the total projected operating cost.

(5) Once established, a per diem rate will remain in place, unless the per diem rate is adjusted.

(b) The costs incurred in providing behavioral health treatment and room and board are included in the per diem payment for services in a PRTF and may not be billed separately or in addition to the per diem payment rate by the PRTF or any other entity with which the PRTF may have an agreement to provide these services.

(c) If there is more than one accounting method for handling a cost item, the method initially elected by the PRTF shall be followed consistently in subsequent annual cost reports, unless the PRTF submits prior written justification and receives approval from the Department for using a different accounting method.

§ 1330.41. Third-party liability.

(a) A PRTF shall utilize available third-party resources, including Medicare Part B, for services a child, youth or young adult receives while in the PRTF.

(b) If a PRTF receives reimbursement from a third party subsequent to payment from the Department, the PRTF shall repay the Department by submitting a replacement of prior claim according to the Department's instructions.

(c) If a child, youth or young adult or the legal guardian of a child, youth or young adult requests a copy of the record of payment or amounts due, the PRTF shall submit a copy of the invoice and the request to the Department.

(d) Except as specified in subsection (e), if a child, youth or young adult has third-party resource benefits, the MA program will pay the lesser of the following:

(1) A PRTF's per diem payment rate multiplied by the number of covered days, minus any payment from available third-party resources, including any Medicare Part B payment.

(2) The amount of the insurance plan's deductible and coinsurance minus any other payment from an available third-party resource, including any Medicare Part B payment.

(e) If payment from a child's, youth's or young adult's available third-party resources equals or exceeds a PRTF's per diem rate multiplied by the number of compensable days, the Department will not make payment to the PRTF.

§ 1330.42. Billing requirements.

(a) A PRTF shall submit invoices to the Department in accordance with the Department's instructions.

(b) Original and resubmitted claims, including replacement claims, must be received for final adjudication within 365 days following the last date of service on the invoice.

(c) If the service spans 2 fiscal years, a separate invoice must be prepared for each fiscal year.

(d) If the service spans two different per diem rates, a separate invoice must be prepared for each period covered by the different rates.

§ 1330.43. Financial records.

(a) A PRTF shall maintain adequate financial and statistical records for determination of costs payable under the MA program for a period of 5 years after the date of last payment.

(b) A PRTF shall maintain all of the following records:

- (1) General financial ledgers, journals and books.
- (2) Original evidence of cost, such as purchase requisitions, purchase orders, vouchers, vendor invoices, requisitions for supplies, inventories, timecards, payrolls and bases for apportioning costs, that are auditable and relate to the determination of reasonable costs.
- (3) Records relating to allocated administrative costs.
- (4) Records relating to each annual cost report.
- (5) Cash disbursement journals.
- (6) Cash receipts journals.
- (7) Payroll journals or computer printouts.
- (8) Fixed asset ledgers or equivalent records.
- (9) Inventory control records.
- (10) Charts of accounts that parallel or crosswalk to the annual cost report format issued by the Department.
- (11) Statement listing all sources of a PRTF's revenue, including Federal, State, local and private sources.
- (12) Accounting records.
- (13) Documentation of staff compensation by PRTF positions.

UTILIZATION REVIEW

§ 1330.51. Scope of claims review procedures.

Claims submitted for payment under the MA program are subject to the utilization review procedures in Chapter 1101 (relating to general provisions).

ADMINISTRATIVE SANCTIONS

§ 1330.61. Sanctions, denied payments and overpayments.

(a) If the Department determines that a PRTF has billed for services inconsistent with the requirements of this chapter or Chapter 5330 (relating to psychiatric residential treatment facility) or provided services outside the scope of customary standards of medical practice or otherwise violated the standards set forth in a provider agreement, the PRTF will be subject to the sanctions in Chapter 1101 (relating to general provisions) up to and including termination from the MA program.

(b) If the Department determines that services or items provided by a PRTF were not provided according to standards of practice for the discipline providing the service, were not medically necessary, were inappropriate or were otherwise noncompensable, the Department will deny payment for the services and items and related services and items and recover payment already made for the services and items and related services and items.

(c) If the Department determines as a result of an audit or through other means that a PRTF received excess funds in the form of an overpayment from the Department, the funds must be returned to the Department within 6 months from the date the PRTF is notified.

PROVIDER RIGHT OF APPEAL

§ 1330.71. Provider right of appeal.

Appeals related to this chapter shall be made in accordance with Chapter 41 (relating to medical assistance provider appeal procedures).

PART V. CHILDREN, YOUTH AND FAMILIES MANUAL

Subpart E. RESIDENTIAL AGENCIES, FACILITIES AND SERVICES

ARTICLE I. LICENSING/APPROVAL

CHAPTER 3800. CHILD RESIDENTIAL AND DAY TREATMENT FACILITIES

GENERAL PROVISIONS

§ 3800.3. Exemptions.

This chapter does not apply to the following:

* * * * *

(11) Private homes of persons providing care to a relative, except homes in which children live with their own children but no other relative, unless the home is a transitional living residence that is exempt from this chapter under paragraph (2).

(12) Psychiatric residential treatment facilities licensed under Chapter 5330 (relating to psychiatric residential treatment facility).

PART VII. MENTAL HEALTH MANUAL

Subpart E. RESIDENTIAL AGENCIES/FACILITIES/SERVICES

(Editor's Note: Chapter 5330 is proposed to be added and is printed in regular type to enhance readability.)

CHAPTER 5330. PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY

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GENERAL PROVISIONS

§ 5330.1. Purpose.

The purpose of this chapter is to establish minimum requirements and service standards that shall be met for a facility to obtain a license as a PRTF.

§ 5330.2. Scope.

This chapter applies to PRTFs that operate in this Commonwealth and serve children, youth or young adults with a behavioral health diagnosis. This chapter does not apply to providers that offer services for substance use disorder or provide services for a primary diagnosis of substance use disorder, which must be licensed by the Department of Drug and Alcohol Programs under 28 Pa. Code Part V (relating to Department of Drug and Alcohol Programs).

§ 5330.3. Definitions.

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

AED—An automatic external defibrillator.

APP—*advanced practice professional*—An individual who is licensed as a certified registered nurse practitioner or physician assistant.

Aversive conditioning—The application of startling, painful or noxious stimuli.

CMS—The Centers for Medicare & Medicaid Services.

Caregiver—An individual with the primary responsibility for the care and supervision of a child, youth or young adult.

Chemical restraint—The administration of a drug that has the temporary effect of restricting a child's, youth's or young adult's freedom of movement that is used to manage the child's, youth's or young adult's behavior and reduces risk to the safety of the child, youth, young adult or others and is not the standard service for the child's, youth's or young adult's behavioral health needs.

Child—An individual under 14 years of age.

Contraband—Property that poses a threat to a child's, youth's, young adult's or other's safety.

Department—The Department of Human Services of the Commonwealth.

Educational host district—The school district where a PRTF is physically located.

Elopement—When a child, youth or young adult leaves the premises of a PRTF or a location without PRTF staff approval.

Emergency safety situation—A sudden, unexpected occurrence or set of circumstances demanding immediate action.

Exclusion—The removal of a child, youth or young adult from the child's, youth's or young adult's immediate environment and restricting the child, youth or young adult alone to a room or area that is not locked.

Grievance—A written or verbal concern expressed by a child, youth, young adult, parent, legal guardian or caregiver about a PRTF.

Intimate sexual contact—Vaginal and anal penetration, oral sex or direct skin-to-skin touching of sexual organs or the touching of intimate body parts.

LPN—licensed practical nurse—The term includes an individual licensed under the laws of this Commonwealth to practice practical nursing or an individual who holds a privilege to practice as a practical nurse under the Nurse Licensure Compact Act (35 P.S. §§ 10291—10295).

Manual restraint—A physical hands-on technique that restricts the movement or function of a child, youth or young adult or a portion of the child's, youth's or young adult's body. The term does not include the use of hands-on assistance needed to enable a child, youth or young adult to achieve a goal or objective identified in a treatment plan.

Mechanical restraint—The use of a device attached or adjacent to a child's, youth's or young adult's body that restricts freedom of movement or normal access to the child's, youth's or young adult's body which cannot easily be removed by the child, youth or young adult.

PRTF—psychiatric residential treatment facility—A residential facility that provides services to treat the behavioral health needs of children, youth or young adults under the direction of a psychiatrist.

Parent—The biological or adoptive father or mother of a child, youth or young adult.

RN—registered nurse—The term includes an individual licensed under the laws of this Commonwealth to practice professional nursing or an individual who holds a privilege to practice as a registered nurse under the Nurse Licensure Compact Act.

Reportable illness—A life-threatening illness, involuntary emergency psychiatric admission or an illness that appears on the Department of Health's List of Reportable Diseases.

Reportable injury—An injury for which a child, youth or young adult requires medical treatment more intensive than first aid. The term first aid includes assessing a condition, cleaning a wound, applying topical medications and applying simple bandages.

Seclusion—Restricting a child, youth or young adult in a locked room, at any time, including sleeping hours. A locked room includes a room with a door locking device such as a key lock, spring lock, bolt lock or foot pressure lock or a room where the door is physically held closed and the child, youth or young adult is prevented from

leaving the room. The term includes locking a child, youth or young adult in a bedroom during sleeping hours.

Secure PRTF—A PRTF from which egress is prohibited.

Serious injury—Bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.

Staff—Individuals employed by a PRTF on a full-time or part-time basis. The term includes contracted staff, temporary staff, volunteers and interns.

Supervisory staff—PRTF staff that meet the qualifications of a medical director, clinical director, program director, mental health professional or mental health worker supervisor.

Time out—A voluntary behavioral approach that enables a child, youth or young adult to leave an immediate environment for a period of time to de-escalate and regain self-control.

Trauma-informed care—A strengths-based approach to service delivery and organizational structure that:

(i) Realizes the widespread impact of trauma, including historical trauma, and understands potential paths to recovery.

(ii) Recognizes the signs and symptoms of trauma in children, youth, young adults, parents, legal guardians, caregivers, staff and others involved with the PRTF.

(iii) Responds by fully integrating knowledge about trauma into policies, procedures and practices and seeks to actively prevent re-traumatization.

Treatment plan—An individualized and detailed written plan of treatment services specifically tailored to address a child's, youth's or young adult's needs.

Treatment team—A group of individuals who are led by a treatment team leader and includes the PRTF staff directly involved in the child's, youth's or young adult's treatment, and the child, youth or young adult. The treatment team may also include the child's, youth's or young adult's parent, legal guardian or caregiver; and any individuals chosen by the child, youth or young adult or the parent, legal guardian or caregiver.

Treatment team leader—A board-certified or board-eligible psychiatrist who has the overall responsibility of directing the child's, youth's or young adult's treatment.

Visit—When a child, youth or young adult is under the approved temporary supervision of an individual off the facility premises at the individual's residence or in the community and not under the supervision of PRTF staff.

Young adult—An individual 18 years of age or older but under 21 years of age or an individual who is under 22 years of age but was admitted to the PRTF prior to turning 21 years of age.

Youth—An individual 14 years of age or older but under 18 years of age.

§ 5330.4. Licensure and certificate of compliance.

(a) A PRTF shall obtain a license from the Department prior to beginning operations.

(b) A residential treatment facility licensed under Chapter 3800 (relating to child residential and day treatment facilities) that provides the services of a PRTF as of [insert the effective date of the final-form rule-

making] shall comply with this chapter by [insert date that is 12 months after the effective date of the final-form rulemaking].

(c) To be licensed as a PRTF, a facility shall:

(1) File an application for a certificate of compliance with the Department in accordance with the Department's application procedure.

(2) Comply with the requirements of this chapter.

(3) Comply with the requirements of Chapter 20 (relating to licensure or approval of facilities and agencies).

(4) Comply with the requirements of Articles IX or X of the Human Services Code (62 P.S. §§ 901—1088) as applicable.

(5) Comply with the requirements of 42 CFR Part 441, Subpart D (relating to inpatient psychiatric services for individuals under 21 years of age in psychiatric facilities or programs).

(6) Be accredited by The Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation or another accrediting body approved by the Department.

(7) Obtain a certificate of compliance from the Department prior to beginning operations.

(d) The Department will issue a new certificate of compliance for each physical location that qualifies for a certificate of compliance.

(e) A PRTF shall post in a conspicuous and public place the current certificate of compliance and have a copy of this chapter readily available to be viewed.

§ 5330.5. Maximum capacity.

(a) The maximum capacity specified on the certificate of compliance will be based on the available bedroom square footage and number of toilets and sinks in the PRTF.

(b) The maximum capacity specified on the certificate of compliance may not be exceeded.

§ 5330.6. Fire safety approval.

(a) A PRTF shall obtain a valid fire safety approval from the appropriate local building authority under the Pennsylvania Construction Code Act (35 P.S. §§ 7210.101—7210.1103) prior to applying for an initial certificate of compliance.

(b) If a fire safety approval is withdrawn or restricted, the PRTF shall provide notification to the Department verbally within 24 hours and in writing within 48 hours of service of notice of the withdrawal or restriction. The notification shall include a plan to remedy the issue that led to the withdrawal or restriction of the fire safety approval or a plan for relocating the children, youth or young adults residing in the PRTF.

(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the PRTF shall submit a new fire safety approval or written certification from the appropriate fire safety authority that a new fire safety approval is not required. The PRTF shall submit this documentation to the Department within 15 days of the completion of the renovation or alteration.

(d) The Department will report fire safety concerns observed during an inspection to the fire safety authority that issued the fire safety approval.

§ 5330.7. Exemptions.

(a) This chapter does not apply to community residences for persons with mental illness that provide care to both children, youth or young adults and adults in the same facility or community residential host homes for persons with mental illness that are licensed under Chapter 5310 (relating to community residential rehabilitation services for the mentally ill).

(b) This chapter does not apply to residential facilities that serve children, youth or young adults that are licensed under Chapter 3800 (relating to child residential and day treatment facilities).

GENERAL REQUIREMENTS

§ 5330.11. Service description.

(a) As part of the initial certificate of compliance application, a facility shall submit to the Department for review and approval a written service description that includes all of the following:

(1) The PRTF's mission and vision for supporting and maximizing the behavioral health of a child, youth or young adult.

(2) Address, phone number, web site and accreditation agency of the PRTF.

(3) An overview of the PRTF to include a description of specialized services and modalities the PRTF offers.

(4) The average length of treatment.

(5) Identification of the target population served by the PRTF, including age range, gender and total number of children, youth or young adults that will be served.

(6) The bed capacity of the PRTF.

(7) Description of the criteria used for exclusion.

(8) Goals, objectives and expected outcomes of the PRTF.

(9) Description of the overall theoretical design and clinical approaches to services.

(10) Description of how the PRTF implements and utilizes trauma-informed care practices.

(11) Description of the level system as specified in § 5330.148 (relating to level system), if applicable.

(12) Description of the expectations that will be used to encourage active involvement in the treatment process by the parent, legal guardian or caregiver.

(13) Identification of the specific restrictive procedures utilized by a PRTF.

(14) Description of educational providers that will be utilized by a child, youth or young adult while at the PRTF.

(15) Identification of the school district within which the PRTF is located.

(16) Description of the discharge planning process of the PRTF.

(17) An organizational chart of the PRTF according to position titles.

(b) A PRTF's updated service description must be approved by the Department prior to a change in services specified in subsection (a).

§ 5330.12. Coordination of services.

(a) A PRTF shall have written agreements to coordinate services with other service providers, including the following:

- (1) A psychiatric inpatient hospital.
- (2) A local community hospital.
- (3) Peer support providers.
- (4) Mental health and intellectual or developmental disability case management programs.
- (5) Drug and alcohol programs.
- (6) Educational providers.

(b) A PRTF shall update the written agreements with the other service providers annually or when the PRTF becomes aware that the agreements are no longer accurate.

(c) A PRTF shall have an affiliation or a written transfer agreement with at least one hospital that participates in the Medical Assistance Program. The affiliation or transfer agreement must reasonably ensure all of the following:

(1) A child, youth or young adult will be transferred from a PRTF to a hospital and admitted in a timely manner when a transfer is medically necessary for medical care or acute psychiatric care.

(2) Medical and other information needed for the child's, youth's or young adult's care will be exchanged between the PRTF and the hospital in accordance with Federal and State medical privacy laws and regulations, including any information needed to determine whether the appropriate care can be provided in a less restrictive setting.

(3) Services are available to each child, youth or young adult at all times.

§ 5330.13. Abuse.

(a) A PRTF shall have a written policy and procedure on the identification of abuse, reporting abuse, plan of supervision for any PRTF staff implicated in abuse and plan for the protection of the child, youth or young adult who was subject to abuse.

(b) A PRTF shall comply with 23 Pa.C.S. §§ 6301—6388 (relating to Child Protective Services Law) and Chapter 3490 (relating to protective services).

(c) A PRTF shall comply with the Adult Protective Services Act (35 P.S. §§ 10210.101—10210.704).

§ 5330.14. Reportable incidents.

(a) A PRTF shall develop a written policy and procedure on the reporting, investigation and management of reportable incidents.

(b) A PRTF shall call the Department and complete an incident report through the Department's information management system within 12 hours after any of the following reportable incidents are known to the PRTF:

- (1) Fire requiring the children, youth or young adults of a PRTF to shelter in place or relocate.
- (2) Death of a child, youth or young adult.
- (3) Serious injury to a child, youth or young adult.
- (4) Disruption to water, heat, power or cooling at a PRTF.

(c) A PRTF shall complete an incident report through the Department's information management system within 12 hours after any of the following reportable incidents are known to a PRTF:

(1) Use of a prohibited restrictive procedure specified in § 5330.183 (relating to prohibited restrictive procedures).

(2) An incident where a child, youth or young adult requires hospitalization or outpatient treatment at a hospital or other medical facility.

(3) Physical act by a child, youth or young adult to attempt suicide.

(4) Child's, youth's or young adult's elopement from a PRTF.

(5) Incidents of physical assault involving a child, youth, young adult or PRTF staff.

(6) Violation of a child's, youth's or young adult's civil rights.

(7) Intimate sexual contact involving a child, youth or young adult.

(8) An outbreak of a serious communicable disease as defined by the Department of Health.

(9) Suspected abuse or abuse of a child, youth or young adult.

(10) An event that results in notification of emergency services, such as the fire department, law enforcement or emergency medical services.

(11) Activation of a PRTF emergency preparedness plan.

(12) Misuse of a child's, youth's or young adult's funds.

(13) A medication error as specified in § 5330.165 (relating to medication error).

(d) A PRTF shall call the parent, legal guardian or caregiver and inform the parent, legal guardian or caregiver of the reportable incidents identified in subsections (b) and (c) no later than 12 hours after the reportable incident is known to the PRTF.

(e) A PRTF shall report the following reportable incidents to the State-designated protection and advocacy system no later than close of business the next business day after the reportable incident is known to a PRTF:

(1) Death of a child, youth or young adult.

(2) Physical act by a child, youth or young adult to attempt suicide.

(3) Serious injury to a child, youth or young adult.

(f) If a PRTF reports a reportable incident to the State-designated protection and advocacy system, it shall include all of the following information:

(1) Name of the child, youth or young adult involved in the reportable incident.

(2) Description of the reportable incident.

(3) Name, street address and telephone number of the PRTF.

(g) A PRTF shall document in the child's, youth's or young adult's record the date and time a report was made to the State-designated protection and advocacy system and the name and title of the individual from the State-designated protection and advocacy system that received the report.

(h) A PRTF shall report the death of a child, youth or young adult to the appropriate CMS regional office no

later than close of business the next business day after the child's, youth's or young adult's death is known to the PRTF and document in the child's, youth's or young adult's record that the child's, youth's or young adult's death was reported to the appropriate CMS regional office.

(i) A PRTF shall document in the child's, youth's or young adult's record the date and time the Department was called about a reportable incident identified in subsection (b) and the name and title of the individual from the Department who was notified of the reportable incident.

(j) A PRTF shall document in the child's, youth's or young adult's record the date and time the parent, legal guardian or caregiver was called about a reportable incident identified in subsections (b) and (c) and the name of the parent, legal guardian or caregiver who was notified of the reportable incident.

(k) A copy of all incident reports in subsections (b) and (c) shall be maintained in the child's, youth's or young adult's record.

§ 5330.15. Recordable incidents.

(a) A PRTF shall maintain a record of the following recordable incidents:

- (1) Medical seizure that requires medical attention.
- (2) Suicidal gesture or verbal threat of suicide or harm to self or others.
- (3) Property damage of more than \$500.
- (4) Search of a child, youth or young adult or the child's, youth's or young adult's property.
- (5) A reportable injury or reportable illness while the child, youth or young adult is on a visit.

(b) A PRTF shall notify a child's, youth's or young adult's parent, legal guardian or caregiver of a recordable incident specified in subsection (a)(1)—(5) no later than 12 hours after a recordable incident occurs. The notification shall be documented in the child's, youth's or young adult's record.

§ 5330.16. Child, youth or young adult funds.

(a) A PRTF shall have a written policy and procedure on the management and disbursement of a child's, youth's or young adult's funds.

(b) Money earned or received by a child, youth or young adult is the child's, youth's or young adult's personal property.

(c) If a PRTF maintains funds for a child, youth or young adult, the PRTF shall maintain a separate accounting system for the child's, youth's or young adult's funds, including the dates and amounts of deposits and withdrawals. Combining a child's, youth's or young adult's funds with PRTF funds is prohibited.

(d) If a PRTF maintains funds for a child, youth or young adult, the child, youth or young adult shall be provided with an accounting of their funds at least once a month and upon request.

(e) A PRTF may not use or borrow a child's, youth's or young adult's funds.

(f) A PRTF shall release the youth's or young adult's funds to the youth or young adult upon discharge and upon request.

(g) A PRTF shall release a child's funds to the child's parent, legal guardian or caregiver upon discharge and upon request.

§ 5330.17. Consent to treatment.

(a) Consent to treatment must be obtained in accordance with Federal and State laws, regulations and Department policies regarding consent to treatment.

(b) Prior to the initiation of services provided by a PRTF, the PRTF shall obtain consent from either a youth or young adult, or the child's, youth's or young adult's parent, legal guardian or caregiver for the child, youth or young adult to receive services.

(c) Consent for emergency physical health treatment is not required for life-threatening conditions when an attempt to obtain consent would result in a delay of services and the delay would increase the risk of harm to the child's, youth's or young adult's life or health.

(d) Consent and attempts to obtain consent shall be documented in the child's, youth's or young adult's record. Documentation of consent, refusal to consent and attempts to obtain consent shall include all of the following:

- (1) Name of the person contacted to provide consent.
- (2) Relationship of the person contacted to provide consent for the treatment to the child, youth or young adult.
- (3) Name and title of the PRTF staff person who sought consent.

§ 5330.18. Confidentiality of records.

(a) A PRTF shall comply with all of the following statutes and regulations relating to confidentiality of records, to the extent applicable:

- (1) Chapter 63 of 23 Pa.C.S. (relating to Child Protective Services Law).
- (2) Part III of 23 Pa.C.S. (relating to Adoption Act).
- (3) The Mental Health Procedures Act (50 P.S. §§ 7101—7503).
- (4) Section 602(d) of the Mental Health and Intellectual Disability Act of 1966 (50 P.S. § 4602(d)).
- (5) The Confidentiality of HIV-Related Information Act (35 P.S. §§ 7601—7612).
- (6) Sections 5100.31—5100.39 of 55 Pa. Code (relating to confidentiality of mental health records).
- (7) Sections 3490.91—3490.95 of 55 Pa. Code (relating to confidentiality).
- (8) Section 444 of the General Education Provisions Act (20 U.S.C. § 1232g).
- (9) Part 99 of 34 CFR (relating to family educational rights and privacy).
- (10) The Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191).
- (11) Other applicable statutes and regulations.

(b) Information relating to a child, youth or young adult may only be shared if a signed authorization of release is obtained from the youth or young adult or the child's, youth's or young adult's parent, legal guardian or caregiver.

(c) Information relating to the parent, legal guardian or caregiver of a child, youth or young adult may not be

shared without an authorization of release of information from the child's, youth's or young adult's parent, legal guardian or caregiver.

(d) A PRTF shall have a written policy and procedure on protecting the confidentiality and privacy of a child's, youth's or young adult's information that includes all of the following:

(1) The process to obtain permission to release a photograph of a child, youth or young adult.

(2) The use of photographs of children, youth or young adults.

(3) How the PRTF will ensure that children's, youth's or young adult's and PRTF staff's social media activity does not contain identifying information about a child, youth or young adult served by the PRTF.

§ 5330.19. Emergency preparedness.

A PRTF shall comply with the requirements of 42 CFR 441.184 (relating to emergency preparedness).

§ 5330.20. Visits.

(a) A PRTF shall have a written policy and procedure on visits.

(b) A PRTF may not deny a child, youth or young adult a visit as a means of punishment or coercion.

(c) A PRTF shall develop a visit plan for a child, youth or young adult when the child, youth or young adult is not under the supervision of PRTF staff that includes both of the following:

(1) Identified coping skills for the child, youth or young adult.

(2) Telephone numbers for local crisis intervention services and for the PRTF.

(d) A PRTF shall give the visit plan for a child, youth or young adult to the individual who will be supervising the child, youth or young adult during the visit.

(e) Prior to a visit that occurs at the parent's, legal guardian's or caregiver's residence or in the community, a PRTF shall require that the child's, youth's or young adult's parent, legal guardian or caregiver sign an acknowledgement that the parent, legal guardian or caregiver will receive, secure, administer and return prescribed medication not taken by the child, youth or young adult during the visit.

(f) The visit plan and signed acknowledgment shall be included in the child's, youth's or young adult's record.

(g) A PRTF shall contact the child's, youth's or young adult's parent, legal guardian or caregiver at least once every 24 hours if a visit lasts more than 24 hours to check on the safety, health and well-being of the child, youth or young adult.

§ 5330.21. Awake hours and sleeping hours.

A PRTF shall have a written policy and procedure that designates the PRTF's awake hours and sleeping hours.

RIGHTS

§ 5330.31. Rights.

(a) A PRTF shall have a written policy and procedure on the rights of children, youth or young adults.

(b) A child, youth or young adult has the right to all of the following:

(1) To be informed of the policies and procedures of the PRTF.

(2) To appropriate medical, behavioral health and dental treatment.

(3) To receive services in the PRTF in the least restrictive setting necessary to accomplish the treatment objectives.

(4) To participate in the development and review of the child's, youth's or young adult's treatment plan.

(5) To clean and seasonal clothing that is age and gender appropriate.

(6) To be free from excessive medication.

(7) To be free from abuse, mistreatment, threats, harassment, corporal punishment and unusual treatment.

(8) To not be subjected to unusual or extreme methods of discipline which may cause psychological or physical harm to the child, youth or young adult.

(9) To be protected from unreasonable search and seizure. A PRTF may conduct searches of a child, youth or young adult or the child's, youth's or young adult's personal property in accordance with § 5330.34 (relating to searches).

(10) To communicate with PRTF staff in a language that the child, youth or young adult understands, including American Sign Language, and when necessary, through interpreters or translators.

(11) To be treated with dignity and respect.

(12) To be assisted by an advocate of the child's, youth's or young adult's choice in the assertion of rights and to communicate with a lawyer in private.

(13) All civil rights unless prohibited by court order.

(14) To practice the child's, youth's or young adult's religion of choice or abstain from religious practices.

(15) To communicate with a clergy person in private.

(16) To file a grievance without retaliation and to receive a prompt response to the grievance.

(17) To communicate privately with an individual unless the communication is prohibited by court order or the child's, youth's or young adult's treatment team has determined that communication with an individual would negatively impact the child's, youth's or young adult's treatment, safety or well-being.

(18) To visit with the child's, youth's or young adult's parent, legal guardian or caregiver at reasonable hours at least once each week, at a time and location convenient for the parent, legal guardian or caregiver, the child, youth or young adult and the PRTF, unless the parent, legal guardian or caregiver is prohibited from visiting by court order or the child's, youth's or young adult's treatment team has determined that the visit with the parent, legal guardian or caregiver would negatively impact the child's, youth's or young adult's treatment, safety or well-being.

(19) To receive visitors of the child's, youth's or young adult's choice at reasonable hours unless the visitor is prohibited from visiting by court order or the child's, youth's or young adult's treatment team has determined that the visitor would negatively impact the child's, youth's or young adult's treatment, safety or well-being.

(20) To receive and send unopened letters and to have outgoing letters stamped and mailed unless prohibited by court order and to be allowed to read and write letters in private. Incoming and outgoing mail may be inspected for contraband when there is reasonable suspicion that the

contents of the mail may negatively impact the child's, youth's or young adult's treatment, safety or well-being. The inspection shall be done in the presence of the child, youth or young adult.

(21) To have access to a telephone designated for use by children, youth or young adults.

(22) To keep and use personal property, unless it is determined that a specific item is contraband in accordance with the PRTF's policy and procedure. The reasons for imposing a limitation on personal property and its scope shall be clearly defined, documented and explained to the child, youth or young adult.

(23) To be paid in compliance with the Fair Labor Standards Act of 1938 (29 U.S.C. §§ 201—219) and the Child Labor Act (43 P.S. §§ 40.1—40.14) for any work the child, youth or young adult does for the PRTF.

(24) To peacefully assemble and to join with other children, youth or young adults to organize a body of or participate in government of the PRTF, when it has been determined feasible by the PRTF.

(25) To be discharged from the PRTF as soon as the child, youth or young adult no longer needs services.

(c) A child's, youth's or young adult's rights may not be used as a reward or sanction.

(d) A child's, youth's or young adult's parent, legal guardian or caregiver has all of the following rights:

(1) To communicate with PRTF staff in a language that the parent, legal guardian or caregiver understands, including American Sign Language, and when necessary, through interpreters or translators.

(2) To have ongoing contact with their child, youth or young adult unless prohibited by court order or determined by the child's, youth's or young adult's treatment team that the contact would negatively impact the child's, youth's or young adult's treatment, safety or well-being.

(3) To actively participate in the development, implementation and monitoring of their child's, youth's or young adult's treatment unless prohibited by court order or determined by the child's, youth's or young adult's treatment team that the active participation would negatively impact the child's, youth's or young adult's treatment, safety or well-being.

(e) A PRTF shall obtain a written acknowledgement from a youth or young adult or the child's, youth's or young adult's parent, legal guardian or caregiver that the policy on the rights of children, youth and young adults was received and reviewed within 7 days of the child's, youth's or young adult's admission to the PRTF. The signed acknowledgement shall be maintained in the child's, youth's or young adult's record.

(f) A copy of a child's, youth's or young adult's rights specified in subsection (b) shall be posted in a conspicuous and public location in the PRTF.

§ 5330.32. Grievance procedures.

(a) A child, youth or young adult and the child's, youth's or young adult's parent, legal guardian or caregiver has the right to file a grievance with a PRTF.

(b) A PRTF shall have a written policy and procedure on grievances that assures the investigation and resolution of grievances and includes both of the following:

(1) A process to document written and verbal grievances.

(2) A process that assures that written and verbal grievances are submitted in a secure manner and without fear of retaliation.

(c) A copy of the PRTF grievance policy and procedure shall be posted in a conspicuous and public place in the PRTF.

(d) A copy of the grievance policy and procedure shall be provided to the child, youth or young adult and the child's, youth's or young adult's parent, legal guardian or caregiver on the day of admission to the PRTF.

(e) A PRTF shall obtain a written acknowledgement from a youth or young adult or the child's, youth's or young adult's parent, legal guardian or caregiver that the grievance policy was received and reviewed within 7 days of the child's, youth's or young adult's admission to the PRTF. The signed acknowledgement shall be filed in the child's, youth's or young adult's record.

§ 5330.33. Nondiscrimination.

A PRTF may not discriminate based on race, color, creed, disability, religious affiliation, ancestry, gender, gender identity or expression, sexual orientation, national origin or age and shall comply with applicable Federal and State laws and regulations.

§ 5330.34. Searches.

(a) A PRTF shall have a written policy and procedure on searches of a child, youth or young adult or the child's, youth's or young adult's personal property.

(b) A PRTF may conduct searches of a child, youth or young adult or the child's, youth's or young adult's property and bedroom when a search is necessary to protect the child, youth, young adult or others.

(c) Unclothed body searches of a child, youth or young adult are prohibited.

STAFFING

§ 5330.41. Supervision of staff.

(a) A PRTF shall have a written policy and procedure on the supervision of PRTF staff that includes all of the following:

(1) A medical director shall provide the following supervision to an RN, clinical director or APP:

(i) One hour of face-to-face supervision every month.

(ii) Thirty minutes of direct observation of the provision of services every 6 months.

(2) A clinical director or medical director shall provide the following supervision to a mental health professional:

(i) Two hours of supervision each month. Of the 2 hours of supervision, 1 hour shall be face-to-face.

(ii) One hour of direct observation of the provision of services every 6 months. Each occurrence of direct observation of services shall be for at least 30 minutes.

(3) A clinical director, medical director or mental health professional shall provide the following supervision to a mental health worker supervisor:

(i) Two hours of supervision each month. Of the 2 hours of supervision, 1 hour shall be face-to-face.

(ii) One hour of direct observation of the provision of services every 6 months. Each occurrence of direct observation of services shall be for at least 30 minutes.

(4) A clinical director, medical director, mental health professional or mental health worker supervisor shall provide the following supervision to a mental health worker:

(i) Two hours of supervision each month. Of the 2 hours of supervision, 1 hour shall be face-to-face.

(ii) One hour of direct observation of the provision of services every 6 months. Each occurrence of direct observation of services shall be for at least 30 minutes.

(5) If a PRTF utilizes a mental health worker supervisor, the mental health worker supervisor shall supervise the mental health worker.

(6) An RN shall provide the following supervision to an LPN:

(i) One hour of face-to-face supervision every month.

(ii) Thirty minutes of direct observation of the provision of services every 6 months.

(b) A PRTF shall maintain documentation about each supervision session in the supervised PRTF staff person's personnel file that includes the following:

(1) The date and type of supervision session or date of direct observation.

(2) The location of the supervision session or location of direct observation.

(3) The start and end time of the supervision session or direct observation.

(4) Summary of the purpose and content of the supervision session or direct observation.

(5) Signature and date of signature for both the supervisee and the supervisor.

(c) Face-to-face supervision may be delivered through secure, real-time, two-way audio and video transmission that meets technology and privacy standards required by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191).

§ 5330.42. Staff requirements.

(a) Staff working in a PRTF shall be 21 years of age or older.

(b) At least two PRTF staff persons who are trained in the use of manual restraints shall be present and available at the PRTF at all times.

(c) During the PRTF's awake hours, the following requirements must be met:

(1) At least one mental health worker or a PRTF staff person who meets the qualifications of a mental health worker shall provide supervision to every six children, youth or young adults.

(2) PRTF staff providing supervision shall always be within auditory and visual range of children, youth or young adults.

(3) A mental health professional shall be present at the PRTF.

(d) During sleeping hours, the following requirements must be met:

(1) At least one mental health worker or a PRTF staff person who meets the qualifications of a mental health worker shall provide supervision to every 12 children, youth or young adults.

(2) PRTF staff providing supervision to children, youth or young adults shall remain within auditory range of the children, youth or young adults being supervised.

(3) PRTF staff supervising children, youth or young adults shall conduct visual observations of each child, youth or young adult at least every 15 minutes.

(e) PRTF staff shall be supervised as follows:

(1) When there are less than 12 children, youth or young adults physically present at a PRTF, at least one PRTF supervisory staff person shall be physically present at the PRTF or on call to consult with PRTF staff.

(2) When 12 or more children, youth or young adults are physically present at a PRTF, at least one PRTF supervisory staff person shall be physically present at the PRTF for every 12 children, youth or young adults.

§ 5330.43. Medical director.

(a) A PRTF shall have a medical director.

(b) The medical director shall be responsible for both of the following:

(1) Overseeing the delivery of psychiatric services and programming to children, youth or young adults in a PRTF.

(2) Coordination and supervision of PRTF staff on clinical and medical matters, including the prescribing and monitoring of psychotropic medication.

(c) The medical director shall be licensed in this Commonwealth as a physician practicing psychiatry and be a board-certified or board-eligible psychiatrist.

(d) The medical director may also serve as a treatment team leader.

§ 5330.44. Treatment team leader.

(a) A PRTF shall identify a treatment team leader for each child, youth or young adult.

(b) The treatment team leader shall be responsible for all of the following:

(1) Direction of each child's, youth's or young adult's treatment team.

(2) Leading monthly treatment plan meetings for each child, youth or young adult.

(3) Development and implementation of the child's, youth's or young adult's individualized treatment plan.

(4) Overseeing the update of each child's, youth's or young adult's treatment plan by the treatment team at least every 30 days.

(5) Development of a discharge plan for each child, youth or young adult.

(6) Completing a comprehensive psychiatric evaluation that includes an examination of the medical, psychological, social, behavioral and developmental aspects of the child, youth or young adult and reflects the need for a PRTF level of care. The comprehensive psychiatric evaluation shall be completed within 7 days of a child's, youth's or young adult's admission to the PRTF.

(7) Determining if a PRTF level of care remains medically necessary for the child, youth or young adult every 30 days.

(c) The treatment team leader shall meet the qualifications of a medical director specified in § 5330.43(c) (relating to medical director).

§ 5330.45. Clinical director.

- (a) A PRTF shall have a clinical director.
- (b) The clinical director shall be responsible for all of the following:
- (1) Oversight of treatment assessments, services, therapeutic activities and program schedules.
 - (2) Review and response to emergency safety situations that occur at a PRTF.
 - (3) Oversight of the training curricula to ensure the requirements of §§ 5330.51 and 5330.52 (relating to initial staff training; and annual staff training) are met.
- (c) The clinical director shall have at least 2 years of experience in the delivery of behavioral health services to children, youth or young adults with a mental illness or behavioral health disorder and meet one of the following:
- (1) Be licensed in this Commonwealth as a physician.
 - (2) Be licensed in this Commonwealth as a psychologist.
 - (3) Be licensed in this Commonwealth as a marriage and family therapist.
 - (4) Be licensed in this Commonwealth as a professional counselor.
 - (5) Be licensed in this Commonwealth as a clinical social worker.
 - (6) Be licensed in this Commonwealth as a social worker and have completed a clinical practicum.
- (d) A medical director may also serve as a clinical director.

§ 5330.46. Program director.

- (a) A PRTF shall have a program director.
- (b) The program director shall be responsible for all of the following:
- (1) Administration and management of a PRTF.
 - (2) Implementation of the PRTF's policies and procedures.
 - (3) Compliance with this chapter.
 - (4) Overseeing the general safety and protection of children, youth and young adults.
 - (5) Developing and maintaining a program schedule of daily activities, which includes designated awake and sleeping times.
- (c) The program director shall have one of the following:
- (1) At least 1 year of experience in human service administration or direct care of children, youth or young adults with behavioral health needs and a graduate degree in psychology, sociology, social work, counseling, education, human services, public administration, business administration or a related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.
 - (2) At least 2 years of experience in human service administration or direct care of children, youth or young

adults with behavioral health needs and a bachelor's degree in psychology, sociology, social work, counseling, education, human services, public administration, business administration or a related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(3) At least 3 years of experience in human service administration or direct care of children, youth or young adults with behavioral health needs and an associate's degree in psychology, sociology, social work, counseling, education, human services, public administration, business administration or a related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency. One of the 3 years of experience must be in a supervisory or managerial role.

(4) At least 5 years of experience in direct care of children, youth or young adults with behavioral health needs and a high school diploma or the equivalent of a high school diploma. Two of the 5 years of experience must be in a supervisory or managerial role.

§ 5330.47. Registered nurse.

- (a) A PRTF shall have an RN who is either onsite or available at all times when not onsite.
- (b) The RN shall be responsible for all of the following:
- (1) Overseeing the nursing care for children, youth or young adults in a PRTF.
 - (2) Assessing the health conditions of children, youth or young adults and determining appropriate nursing care needs.
 - (3) Participating in monthly treatment plan meetings.
- (c) The RN shall have at least 1 year of experience in treating children, youth or young adults with behavioral health needs.

§ 5330.48. Mental health professional.

- (a) A PRTF shall have a mental health professional.
- (b) Children, youth or young adults in a PRTF shall be assigned to a mental health professional.
- (c) The mental health professional shall be responsible for all of the following:
- (1) Developing of the child's, youth's or young adult's individualized treatment plan.
 - (2) Participating in monthly treatment plan meetings for all assigned children, youth or young adults.
 - (3) Implementing treatment services and therapeutic activities for a child, youth or young adult in accordance with the child's, youth's or young adult's treatment plan.

(4) Providing individual, group or family therapy in accordance with the child's, youth's or young adult's treatment plan.

(5) Coordinating with the treatment team under the direction of the treatment team leader to address the goals, objectives, needs and strengths of assigned children, youth or young adults.

(d) The mental health professional's assigned caseload may not exceed eight children, youth or young adults.

(e) The mental health professional shall meet one of the following:

(1) Be licensed in this Commonwealth as a physician, psychologist, marriage and family therapist, professional counselor or clinical social worker.

(2) Be licensed in this Commonwealth as a social worker or behavior specialist and have a graduate degree that required a clinical or mental health direct service practicum from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(3) Have at least 1 year of experience in providing mental health direct services to children, youth or young adults and a graduate degree with at least nine credits specific to clinical practice in psychology, sociology, social work or counseling from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(4) Completed a clinical or mental health direct service practicum and have a graduate degree with a least nine credits specific to clinical practice in psychology, sociology, social work, education, counseling or a related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or have an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

§ 5330.49. Mental health worker.

(a) A PRTF shall have a mental health worker.

(b) The mental health worker shall be responsible for all of the following:

(1) Implementing therapeutic interventions.

(2) Providing direct and active supervision to children, youth or young adults.

(3) Supporting the strengths and needs of children, youth or young adults.

(4) Sharing pertinent information with the child's, youth's or young adult's treatment team. This may include general observations, progress with service goals and areas of concern.

(5) Facilitating psychoeducational groups.

(c) The mental health worker shall have a high school diploma or the equivalent of a high school diploma and at least 1 year of experience working with children, youth or young adults.

§ 5330.50. Additional staff positions.

The following PRTF staff positions, if utilized, shall meet all of the following requirements:

(1) If within the scope of the APP's practice, an APP may do the following:

(i) Evaluate the physical or psychological condition of a child, youth or young adult who takes a prescribed medication.

(ii) Review, update, sign and date the child's, youth's or young adult's treatment plan.

(iii) Perform initial or routine specific screenings and assessments to assess the physical or psychological condition of a child, youth or young adult.

(2) The APP shall be licensed in this Commonwealth and have at least 1 year of experience working with children, youth or young adults.

(3) If within the scope of the LPN's practice, an LPN may do the following:

(i) Accept verbal orders for a manual restraint.

(ii) Participate in the planning, implementation and evaluation of nursing care provided to a child, youth or young adult.

(4) The LPN shall be onsite at a PRTF whenever an RN is not onsite at the PRTF.

(5) The LPN shall have at least 1 year of experience working with children, youth or young adults.

(6) A mental health worker supervisor may provide the following:

(i) Supervision to a mental health worker.

(ii) Direct and active supervision to children, youth or young adults.

(7) The mental health worker supervisor shall have one of the following:

(i) At least 1 year of experience in the delivery of behavioral health services to children, youth or young adults and a bachelor's degree in psychology, sociology, social work, counseling, education, human services, public administration, business administration or a related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(ii) At least 2 years of experience in the delivery of behavioral health services to children, youth or young adults and an associate's degree in psychology, sociology, social work, counseling, education, human services, public administration, business administration or a related field from a college or university accredited by an agency

recognized by the United States Department of Education or the Council for Higher Education Accreditation or an equivalent degree from a foreign college or university that has been evaluated by the Association of International Credential Evaluators, Inc. or the National Association of Credential Evaluation Services. The Department will accept a general equivalency report from the listed evaluator agencies to verify a foreign degree or its equivalency.

(iii) At least 3 years of experience in the delivery of behavioral health services to children, youth or young adults and a high school diploma or the equivalent of a high school diploma.

§ 5330.51. Initial staff training.

(a) A PRTF shall have a written policy and procedure on the monitoring of initial PRTF staff training.

(b) PRTF staff shall complete an orientation that includes the individual's specific duties and responsibilities and information on the PRTF's policies and procedures.

(c) Except as required under subsection (d), PRTF staff shall complete at least 30 hours of training in the following areas within 120 days of their date of hire:

- (1) The requirements of this chapter.
- (2) The requirements of 23 Pa.C.S. §§ 6301—6388 (relating to Child Protective Services Law) and Chapter 3490 (relating to protective services).
- (3) The requirements of the Adult Protective Services Act (35 P.S. §§ 10210.101—10210.704).
- (4) Fire safety by a fire safety expert. The following apply:
 - (i) Training may be through a video recording if the video recording is prepared by a fire safety expert and is administered onsite by a PRTF staff person who is trained by a fire safety expert.
 - (ii) If the facility serves 20 or fewer children, youth or young adults, the training may be conducted by a PRTF staff person trained by a fire safety expert.
- (5) First aid, opioid overdose reversal medication, Heimlich techniques, cardiopulmonary resuscitation, use of an AED, universal precautions and blood-borne pathogen training facilitated by an individual qualified as a trainer by a hospital or other recognized health care organization.
- (6) The use of manual restraints that is consistent with 42 CFR 483.376 (relating to education and training) and provided by an individual who meets the qualifications in 42 CFR 483.376(c).

(7) Verbal de-escalation, crisis prevention and suicide prevention.

(8) Professional ethics and conduct, professional boundaries and confidentiality.

(9) Cultural competency and equity training that increases awareness of cultural norms and provides skills and knowledge regarding the value of diversity.

(10) Trauma-informed care principles and practical applications.

(11) Mental health diagnoses, conditions, needs and effective service interventions for children, youth or young adults.

(12) Principles of child development.

(13) Recognizing and responding to emergency safety situations.

(d) The medical director, treatment team leader, clinical director, program director, RN, mental health professional, mental health worker, and if utilized, an APP, an LPN and a mental health worker supervisor shall complete the training required under subsection (c) prior to working directly with children, youth or young adults.

(e) A PRTF shall keep documentation of completion of initial training requirements, which includes all of the following:

- (1) Name of the PRTF staff trained.
- (2) Training date.
- (3) Training source.
- (4) Name and qualifications of the trainer.
- (5) Length of training.

§ 5330.52. Annual staff training.

(a) A PRTF shall have a written policy and procedure on the monitoring of annual PRTF staff training.

(b) PRTF staff shall have at least 30 hours of annual training in the areas specified in § 5330.51(c) (relating to initial staff training).

(c) In addition to the requirements in subsection (b), the medical director, treatment team leader, clinical director, program director, RN, mental health professional, mental health worker, and if utilized, an APP, an LPN and a mental health worker supervisor shall complete an additional 10 hours of annual training in the following areas:

- (1) Best practices, including evidenced-based practices to address the unique characteristics of the children, youth or young adults served.
- (2) Types, uses and side effects of psychotropic medications prescribed to children, youth or young adults.
- (3) Effective and transferable discharge and reintegration planning.
- (4) Documentation skills and requirements.
- (5) Mental health conditions, emotional disturbances or behavior disorders in children, youth or young adults as they relate to their biopsychosocial needs.

(d) A PRTF shall keep documentation of completion of annual training requirements, which includes all of the following:

- (1) Name of the PRTF staff trained.
- (2) Training date.
- (3) Training source.
- (4) Name and qualifications of the trainer.
- (5) Length of training.

§ 5330.53. Criminal history checks and child abuse certifications.

(a) Criminal history checks and child abuse certifications must be completed for all PRTF staff in accordance with 23 Pa.C.S. §§ 6301—6388 (relating to Child Protective Services Law) and Chapter 3490 (relating to protective services).

(b) A PRTF shall have a written policy and procedure to ensure that PRTF staff having contact with children, youth or young adults comply with 23 Pa.C.S. §§ 6301—6388 and Chapter 3490, including mandated reporting and training requirements.

PHYSICAL SITE**§ 5330.61. Applicable construction safety laws.**

A PRTF shall comply with the requirements of 34 Pa. Code Part XIV (relating to uniform construction code).

§ 5330.62. Physical accommodations and equipment.

A PRTF shall provide or arrange for physical site accommodations and equipment needed to meet the health and safety needs of a child, youth or young adult served, including special accommodations as a result of a child's, youth's or young adult's disability.

§ 5330.63. Poisons.

(a) Poisonous materials, including cleaning and other toxic materials, must be kept locked and inaccessible to a child, youth or young adult.

(b) Poisonous materials, including cleaning and other toxic materials, must be clearly labeled and stored in a container that meets the requirements for safe storage of that material.

(c) Poisonous materials, including cleaning and other toxic materials, must be kept separate from food, food preparation surfaces and dining surfaces.

§ 5330.64. Heat sources.

Heat sources, such as hot water pipes, fixed space heaters, hot water heaters and radiators exceeding 120°F that are accessible to a child, youth or young adult must be equipped with protective guards or insulation to prevent a child, youth or young adult from making physical contact with the heat source.

§ 5330.65. Sanitation.

(a) Sanitary conditions must be maintained.

(b) A PRTF shall take steps to prevent and address infestation of insects or rodents.

(c) Trash must be removed from the property at least once a week.

(d) Trash inside and outside of a PRTF must be kept in covered trash receptacles that prevent insect and rodent penetration.

§ 5330.66. Ventilation.

(a) Living areas, recreation areas, dining areas, bathrooms, bedrooms and kitchens must be ventilated by at least one operable window or mechanical ventilation.

(b) Windows, including windows in doors, must be securely screened when open.

§ 5330.67. Lighting.

Rooms, bedrooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps and fire escapes must be properly lighted to avoid accidents.

§ 5330.68. Surfaces.

Indoor and outdoor floors, walls, ceilings, windows, doors and other surfaces must be free of damage or hazards.

§ 5330.69. Water.

(a) A PRTF shall have hot and cold water.

(b) Hot water temperature in areas accessible to a child, youth or young adult may not exceed 120°F.

(c) A PRTF that is not connected to a public water or sewer system shall meet all Federal and State statutes, regulations and standards regarding private water and sewage systems.

(d) A PRTF that is not connected to a public water system shall have a coliform water test performed at least every 3 months by the Department of Environmental Protection.

§ 5330.70. Air temperature.

(a) The indoor temperature shall be at least 65°F during awake hours when a child, youth or young adult is present in a PRTF.

(b) The indoor temperature may not be less than 62°F during sleeping hours.

(c) When the indoor temperature exceeds 85°F, a PRTF shall use mechanical ventilation, such as fans or air conditioning.

§ 5330.71. Communication system.

(a) A PRTF shall have a working telephone that is accessible to PRTF staff at all times.

(b) A PRTF shall have communication equipment, such as a hand-held two-way radio, to allow PRTF staff to contact other PRTF staff for assistance in an emergency safety situation.

§ 5330.72. Emergency telephone numbers.

The PRTF's physical address and telephone numbers for the nearest hospital, police department, fire department, ambulance and poison control center must be posted on or by all working telephones accessible to PRTF staff.

§ 5330.73. Handrails and railings.

(a) Ramps, interior stairways and outside steps exceeding two steps must have a well-secured handrail.

(b) Porches that have over an 18-inch drop must have a well-secured railing.

§ 5330.74. Landings and stairs.

(a) Stairs must have a landing which is at least as wide as the doorway, beyond each interior and exterior door that opens directly into a stairway.

(b) Interior stairs must have nonskid surfaces.

§ 5330.75. Furniture.

(a) Furniture must be free of hazards.

(b) A PRTF shall have enough furniture to accommodate seating for the largest group of children, youth or young adults that may routinely congregate so that no child, youth or young adult is required to stand or sit on the floor.

§ 5330.76. Equipment.

(a) Equipment must be kept clean and maintained in good repair.

(b) Equipment that poses a hazard to children, youth or young adults must be stored in an area that is inaccessible to children, youth or young adults.

(c) A PRTF shall have a written policy and procedure to ensure that hazardous equipment is used in a safe and appropriate manner.

§ 5330.77. First aid supplies.

(a) A PRTF shall have a first aid kit available to PRTF staff on every floor of the PRTF.

(b) PRTF staff shall confirm that a first aid kit is present if an activity is being conducted outside on the grounds of the PRTF or away from the PRTF.

(c) A first aid kit shall contain all of the following items:

- (1) A first aid manual.
- (2) Nonporous disposable gloves.
- (3) Antiseptic.
- (4) Assorted adhesive bandages.
- (5) Gauze pads.
- (6) Thermometer.
- (7) Tape.
- (8) Tweezers.
- (9) Scissors.
- (10) Opioid overdose reversal medication.

(d) A first aid kit may not be accessible to children, youth or young adults.

(e) A PRTF shall have an AED that is accessible to PRTF staff.

(f) An AED may not be accessible to children, youth or young adults.

§ 5330.78. Elevators.

An elevator must have a valid certificate of operation from the Department of Labor and Industry.

§ 5330.79. Activity space.

A PRTF shall have indoor space for activities such as recreation, studying and group activities and outdoor space for activities such as recreation and group activities.

§ 5330.80. Exterior conditions.

(a) The exterior of structures and grounds or yard of a PRTF must be free of hazards.

(b) Outside walkways must be free of ice, snow and any type of obstruction.

§ 5330.81. Firearms and weapons.

A PRTF shall have a written policy regarding possession of firearms, weapons and ammunition on the premise of a PRTF. A PRTF is not required to permit firearms, weapons and ammunition. The policy shall be in accordance with Federal and State law.

§ 5330.82. Bedrooms.

(a) A single bedroom must have at least 70 square feet of floor space per child, youth or young adult measured wall to wall, including space occupied by furniture.

(b) A shared bedroom must have at least 60 square feet of floor space per child, youth or young adult measured wall to wall, including space occupied by furniture.

(c) No more than four children, youth or young adults may share a bedroom.

(d) The ceiling height in a bedroom must be at least 7 1/2 feet.

(e) A bedroom must have a window with a source of natural light.

(f) A child, youth or young adult shall be provided with all of the following:

(1) A bed with a solid foundation and fire-retardant mattress in good condition.

(2) A pillow and bedding, in good condition, appropriate for the temperature in the PRTF.

(3) A storage area for clothing.

(g) Cots or portable beds are not permitted.

(h) Bunk beds must allow enough space between each bed and the ceiling to allow a child, youth or young adult to sit up in bed.

(i) Bunk beds must be equipped with securely attached ladders capable of supporting a child, youth or young adult.

(j) The top bunk of bunk beds must be equipped with a secure safety rail on each open side and open end of the bunk.

(k) A bedroom may not be used as a means of egress or as a means to access another part of a PRTF.

§ 5330.83. Bathrooms.

(a) A PRTF shall have at least one functional toilet for every six children, youth or young adults.

(b) A PRTF shall have at least one functional sink for every six children, youth or young adults.

(c) A PRTF shall have at least one functional bathtub or shower for every six children, youth or young adults.

(d) A PRTF shall have slip-resistant surfaces in bathtubs and showers.

(e) Privacy must be provided for toilets, showers and bathtubs by partitions or doors.

(f) A PRTF shall have at least one wall mirror for every six children, youth or young adults.

(g) All of the following toiletry items must be provided for each child, youth or young adult:

- (1) Towels and washcloths.
- (2) Toothpaste.
- (3) Toothbrush.
- (4) Comb or hairbrush.
- (5) Shampoo.
- (6) Soap.
- (7) Feminine hygiene products, if needed.
- (8) Toilet paper.
- (9) Deodorant, if needed.
- (10) Body lotion, if needed.

(h) Bar soap is not permitted unless there is a separate bar clearly labeled for each child, youth or young adult.

§ 5330.84. Kitchen area.

(a) A PRTF shall have a kitchen area with an operable refrigerator, sink, cooking equipment and cabinets for storage.

(b) Utensils for eating, drinking, serving food and preparing food must be washed and rinsed after each use.

(c) Food must be protected from contamination while being stored, prepared, transported and served.

(d) Uneaten food from a child's, youth's or young adult's dish may not be served again or used in the preparation of future meals.

(e) Food must be kept at the following temperatures:

- (1) Cold food must be kept at or below 40°F.
- (2) Hot food must be kept at or above 140°F.

(3) Frozen food must be kept at or below 0°F.

§ 5330.85. Laundry.

Bed linens, towels, washcloths and clothing must be laundered at least once a week.

§ 5330.86. Swimming.

(a) The perimeter of swimming pools must be surrounded by a fence that meets local codes and a gate that is locked when the pool is not in use.

(b) Swimming pools must be inaccessible to children, youth or young adults when not in use.

(c) A certified lifeguard shall supervise children, youth or young adults at all times while swimming. A certified lifeguard may not be counted towards the supervision ratio specified in § 5330.42 (relating to staff requirements).

FIRE SAFETY

§ 5330.91. Compliance with fire safety statutes, regulations and ordinances.

A PRTF shall comply with applicable Federal and State laws, regulations and local ordinances regarding fire safety.

§ 5330.92. Unobstructed egress.

(a) Stairways, hallways, doorways, passageways and egress routes from rooms and from a PRTF must be unlocked and unobstructed unless the fire safety approval specified in § 5330.6 (relating to fire safety approval) permits locking of certain means of egress. If a fire safety approval is not required in accordance with § 5330.6, means of egress may not be locked.

(b) Doors used for egress routes from rooms and from a PRTF may not be equipped with key-locking devices, electronic card-operated systems or other PRTF staff-controlled devices that prevent immediate egress by a child, youth or young adult from the PRTF.

(c) Doors with delayed egress must be equipped with a mechanism that unlocks after no more than a 15-second delay and must meet the requirements of section 1008.1.9.7 of the International Building Code, regarding delayed egress locks.

§ 5330.93. Exits.

(a) If more than four children, youth or young adults sleep above the ground floor of a PRTF, there must be at least two interior or exterior exits from each floor.

(b) If a fire escape is used as a means of egress, it must be permanently installed.

§ 5330.94. Evacuation procedures.

(a) A PRTF shall have written emergency evacuation procedures that include PRTF staff responsibilities, means of transportation and designated meeting areas.

(b) A PRTF shall have emergency evacuation procedures that contain a detailed diagram of exit paths, exit doors and fire extinguishers for each floor posted in a conspicuous and public place on each floor of the PRTF.

(c) An elevator may not be used during a fire drill or an emergency evacuation procedure.

§ 5330.95. Notification of local first responders.

(a) A PRTF shall notify local first responders in writing of all of the following:

(1) Maximum number of children, youth, young adults and PRTF staff that could be present at the PRTF.

(2) Physical address of physical structures.

(3) Specific location of bedrooms.

(4) Assistance needed to evacuate children, youth or young adults in an emergency.

(b) Notification to local first responders must be reviewed and updated annually or within 5 days of when there is a change in the physical address of a physical structure, location of bedrooms or assistance needed to evacuate.

§ 5330.96. Flammable and combustible materials.

Flammable and combustible materials must be used safely, stored away from heat sources and inaccessible to children, youth or young adults.

§ 5330.97. Furnaces.

(a) Furnaces must be inspected and cleaned annually by a professional furnace cleaning company or properly trained PRTF maintenance staff.

(b) A PRTF shall maintain documentation of the annual inspection and cleaning of a furnace.

§ 5330.98. Portable space heaters.

Portable space heaters or heaters that are not permanently mounted or installed are not permitted.

§ 5330.99. Wood and coal burning stoves.

The use of wood and coal burning stoves is not permitted.

§ 5330.100. Fireplaces.

(a) Fireplaces must be securely screened or equipped with protective guards while in use.

(b) PRTF staff shall be present with a child, youth or young adult while a fireplace is in use.

(c) A fireplace chimney and flue must be cleaned and inspected annually by a professional cleaning company or properly trained PRTF maintenance staff.

(d) A PRTF shall maintain documentation of the cleaning and inspection of the fireplace chimney and flue.

(e) Inoperable fireplaces must be inaccessible.

§ 5330.101. Detectors and alarms.

(a) A PRTF shall have an operable smoke detector located within 15 feet of each bedroom door.

(b) A PRTF shall have at least one operable smoke detector on each floor, including a basement and an attic.

(c) Smoke detectors and fire alarms must be a type approved by the Department of Labor and Industry or listed by Underwriters Laboratories.

(d) If a PRTF serves four or more children, youth or young adults or if the PRTF has three or more floors including a basement and an attic, there must be at least one smoke detector on each floor that is interconnected and audible throughout the PRTF or a fire alarm system that is audible throughout the PRTF.

(e) Smoke detectors and fire alarms must be equipped with a visual aid so that an individual with a hearing impairment can be alerted in the event of a fire.

(f) If a smoke detector or fire alarm becomes inoperable, repair or replacement shall be completed within 24 hours of the time the detector or alarm was found to be inoperable.

(g) An approved carbon monoxide alarm must be installed in a PRTF no more than 15 feet from any fossil fuel-burning device or appliance.

(h) Carbon monoxide detectors and alarm systems must be tested and replaced in accordance with the manufacturer's guidelines.

(i) A PRTF shall have a written procedure for fire safety monitoring if a smoke detector, fire alarm or carbon monoxide detector becomes inoperative.

§ 5330.102. Fire extinguishers.

(a) Fire extinguishers must be inspected and approved annually by a fire safety expert who is not an employee of the PRTF. The date of the inspection must be documented on the fire extinguisher.

(b) Fire extinguishers must be listed by Underwriters Laboratories or approved by Factory Mutual Systems.

(c) There must be at least one approved fire extinguisher with a minimum 2-A rating for each floor, including a basement and an attic.

(d) If an indoor floor area including a basement or an attic is more than 3,000 square feet, there must be an additional approved fire extinguisher with a minimum 2-A rating for each additional 3,000 square feet of indoor floor space.

(e) An approved fire extinguisher with a minimum 2A-10BC rating must be in a kitchen. The kitchen fire extinguisher meets the requirements for one approved fire extinguisher for each floor as required in subsection (c).

(f) Fire extinguishers must be accessible to all PRTF staff. A fire extinguisher must be secured if access to the extinguisher by a child, youth or young adult may cause a safety risk to the child, youth or young adult. If fire extinguishers are secured, PRTF staff shall have the means to immediately gain access to the fire extinguisher in the event of a fire emergency.

§ 5330.103. Fire drills.

(a) An unannounced fire drill must be held at least once a month.

(b) Fire drills must be held during normal staffing conditions and not when additional PRTF staff are present.

(c) The evacuation routes must allow children, youth or young adults to evacuate the entire physical structure into a public thoroughfare or to a fire-safe area designated in writing within the past year by a fire safety expert. The public thoroughfare or to a fire-safe area must be within 2 1/2 minutes or within the period specified in writing within the past year by a fire safety expert. The fire safety expert may not be an employee of the PRTF.

(d) A fire drill must be held during sleeping hours at least once every 6 months.

(e) Alternate exit routes must be used during fire drills at least once every 3 months.

(f) Fire drills must be held on different days of the week, at different times and during different staffing shifts.

(g) A fire alarm or smoke detector must be activated during each fire drill.

(h) A PRTF shall have a written fire drill record that contains all of the following:

(1) Address and name of the physical structure where the fire drill occurred.

(2) Date the fire drill occurred.

(3) Time the fire drill occurred.

(4) Amount of time for all individuals to evacuate the PRTF.

(5) The exit route that was utilized during the fire drill.

(6) The number of children, youth or young adults in the location at the time of the fire drill.

(7) Documentation of any issues encountered during the fire drill.

(8) Documentation of whether fire alarms or smoke detectors were operable.

HEALTH

§ 5330.111. Health and behavioral health services.

(a) A PRTF shall identify acute and chronic conditions of a child, youth or young adult and shall arrange for or provide appropriate medical treatment.

(b) Medically necessary physical and behavioral health treatment, diagnostic services, follow-up examinations and services, such as medical, nursing, pharmaceutical, dental, dietary, hearing, vision, blood lead level, psychiatric and psychological services that are planned or prescribed for the child, youth or young adult, shall be arranged for or provided.

§ 5330.112. Initial medical assessment.

(a) A PRTF shall have a written policy and procedure on inclusion of the assessment of health or safety risks in the initial medical assessment of children, youth or young adults.

(b) An initial medical assessment must include all of the following:

(1) Vital signs, such as blood pressure, pulse, temperature and breathing rate.

(2) Allergies.

(3) Medication history.

(4) Immunization history.

(5) Substance use history.

(6) Prior or current injuries or illnesses.

(7) Prior hospitalizations.

(8) Medical diagnoses.

(9) Parents' medical history, if known.

(10) Vision screening.

(11) Hearing screening.

(c) A child, youth or young adult shall have an initial medical assessment completed by a physician, APP or RN within 24 hours of admission to a PRTF.

(d) An initial medical assessment must be signed and dated by the physician, APP or RN who completed the initial medical assessment.

(e) If a physician did not complete the initial medical assessment, a physician shall review and sign the initial medical assessment within 3 days from the date the initial medical assessment was completed.

(f) A copy of the initial medical assessment shall be kept in a child's, youth's or young adult's record.

§ 5330.113. Health and safety plan.

(a) If an initial medical assessment specified in § 5330.112 (relating to initial medical assessment) identifies a health or safety risk to a child, youth, young adult or others, a written health and safety plan to protect the child, youth, young adult or others must be developed and implemented within 24 hours after the initial medical assessment is completed.

(b) The health and safety plan to protect the child, youth, young adult or others must be communicated to and made available to PRTF staff and must be filed in the child's, youth's or young adult's record.

(c) A written health and safety plan must be developed and implemented within 24 hours of the PRTF medical staff or treatment staff being notified of a health or safety risk to the child, youth or young adult.

(d) Written health and safety plans must be updated based on the health and safety risks of the child, youth or young adult.

§ 5330.114. Medical examination.

(a) If a child, youth or young adult did not have a medical examination, or there is no documentation of a medical examination 12 months prior to admission to a PRTF that meets the requirements of the State Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program Periodicity Schedule, a medical examination by a physician or APP shall be completed within 15 days of the child's, youth's or young adult's admission to a PRTF.

(b) An initial medical examination must include all of the following:

(1) Review of the assessments specified in § 5330.112 (relating to initial medical assessment).

(2) Review of the health history and medical information pertinent to the child, youth or young adult to inform medical care, diagnosis and services needed in an emergency safety situation.

(3) Review of required immunizations, screening tests and laboratory tests, including the ordering of any immunizations, screening tests and laboratory tests that are indicated.

(4) Communicable disease detection, if recommended by a physician or APP based on the child's, youth's or young adult's health condition and with appropriate consent from the youth or young adult or the child's, youth's or young adult's parent, legal guardian or caregiver.

(5) Recommendations for follow-up physical or behavioral health treatment, examinations or services.

(c) A child, youth or young adult shall have a medical examination completed annually by a physician or APP that meets the requirements of the State EPSDT Program Periodicity Schedule.

(d) A medical examination must be signed and dated by the physician or APP who completed the medical examination.

(e) Written verification of completion of the medical examination must be kept in the child's, youth's or young adult's record specifying all of the following:

(1) Date of the examination.

(2) Results of the examination.

(3) Name, address and contact information of the examining physician or APP.

(4) Follow-up recommendations.

§ 5330.115. Dental care.

(a) A child, youth or young adult shall have a dental examination performed by a licensed dentist and teeth cleaning performed by a licensed dentist or dental technician at least semiannually.

(b) A child, youth or young adult shall receive a dental examination and teeth cleaning within 30 days after admission to a PRTF.

(c) If the child, youth or young adult had a dental examination and teeth cleaning prior to admission to the PRTF that meets the requirements of subsection (a), an initial examination and teeth cleaning within 30 days after admission is not required.

(d) Follow-up dental work indicated by the examination, such as treatment of cavities and application of protective sealants, must be provided as recommended by the licensed dentist.

(e) A written record of completion of each dental examination and teeth cleaning, including the preadmission dental examination and teeth cleaning permitted in subsection (c), specifying the date of the examination and teeth cleaning, the licensed dentist's name and address, results of the examination, follow-up recommendations made and the dates and provision of follow-up services and treatment, must be kept in the child's, youth's or young adult's record.

§ 5330.116. Vision care.

(a) A child, youth or young adult shall receive vision screening and treatment to include diagnosis and services including eyeglasses, for defects in vision.

(b) A child, youth or young adult shall receive a vision screening within 30 days after admission to a PRTF in accordance with the periodicity schedule recommended by the American Academy of Pediatrics.

(c) If the child, youth or young adult had a vision screening prior to admission to the PRTF that meets the requirements of subsection (a) within the periodicity schedule specified in subsection (b), an initial examination within 30 days after admission is not required. The next screening shall be required within the periodicity schedule specified in subsection (b).

(d) Follow-up treatment, such as provision of eyeglasses, must be provided as recommended by the treating practitioner.

(e) A written record of completion of each vision screening, including the preadmission screening permitted in subsection (c), specifying the date of the screening, the treating practitioner's name and address, results of the screening, follow-up recommendations made, and the dates and provision of follow-up services and treatment, must be kept in the child's, youth's or young adult's record.

§ 5330.117. Hearing care.

(a) A child, youth or young adult shall receive a hearing screening and treatment to include diagnosis and services, including hearing aids, for defects in hearing.

(b) Each child, youth or young adult shall receive a hearing screening within 30 days after admission in accordance with the periodicity schedule recommended by the American Academy of Pediatrics.

(c) If the child, youth or young adult had a hearing screening prior to admission to the PRTF that meets the requirements of subsection (a) within the periodicity schedule specified in subsection (b), an initial examination within 30 days after admission is not required. The next screening shall be required within the periodicity schedule specified in subsection (b).

(d) Follow-up treatment, such as provision of hearing aids, must be provided as recommended by the treating practitioner.

(e) A written record of completion of each hearing screening, including the preadmission screening permitted in subsection (c), specifying the date of the screening, the treating practitioner's name and address, the results of the screening, follow-up recommendations made and the dates and provision of follow-up services and treatment, must be kept in the child's, youth's or young adult's record.

§ 5330.118. Use of drugs, alcohol, tobacco and e-cigarettes.

(a) A PRTF shall have a written policy and procedure on the use of drugs, alcohol, tobacco and e-cigarettes.

(b) Use or possession of drugs, alcohol, tobacco and e-cigarette products by a child, youth or young adult is prohibited.

(c) Use or possession of drugs, alcohol, tobacco and e-cigarette products by a PRTF staff person is prohibited in the PRTF and during transportation of a child, youth or young adult.

(d) If PRTF staff are permitted to use tobacco and e-cigarette products on the grounds of the PRTF, the following apply:

(1) The PRTF shall designate areas of the PRTF grounds where it is permissible to use tobacco or e-cigarettes.

(2) The PRTF shall have a written fire safety procedure in the areas where it is permissible to use tobacco and e-cigarettes. Procedures must include extinguishing procedures and requirements that use of tobacco and e-cigarette products shall occur a safe distance from flammable or combustible materials and physical structures.

(3) Use of tobacco and e-cigarette products must be out of the sight of a child, youth or young adult.

§ 5330.119. Emergency plan.

(a) A PRTF shall have a written medical emergency plan for children, youth, young adults and PRTF staff. The plan must include all of the following:

(1) A hospital or health care provider that will provide services in an emergency.

(2) A transportation method to be used during an emergency.

(3) An emergency staffing plan.

(4) Medical and behavioral health needs or situations for which emergency medical care and services are warranted.

(b) A child, youth or young adult and the child's, youth's or young adult's parent, legal guardian or caregiver shall be given a copy of the medical emergency plan upon the child's, youth's or young adult's admission to the PRTF.

(c) A child's, youth's or young adult's parent, legal guardian or caregiver shall be notified within 12 hours from the time the medical emergency plan is implemented for their child, youth or young adult.

STAFF HEALTH

§ 5330.121. Staff assessment.

(a) PRTF staff who have direct contact with children, youth or young adults or who work in food preparation shall have a health assessment completed within 12 months prior to being hired by the PRTF and shall have a health assessment completed within 24 months of their last health assessment thereafter.

(b) A physician or APP shall complete the health assessment.

(c) The health assessment must include all of the following:

(1) A physical examination.

(2) Tuberculosis screening consistent with § 5330.122 (relating to tuberculosis screening).

(3) Examination for communicable diseases.

(4) Examination of medical problems which might threaten the health of a child, youth or young adult or prevent a PRTF staff person from providing adequate care to children, youth or young adults.

(d) The physician or APP who completed the assessment shall complete a report of the assessment that includes all of the following:

(1) The signature and professional title of the physician or APP who completed the assessment.

(2) Results of the examination for communicable disease.

(3) The physician's or APP's assessment of the PRTF staff person's suitability to provide care to a child, youth or young adult.

(e) A copy of the report of the current health assessment must be included in the PRTF staff person's record.

§ 5330.122. Tuberculosis screening.

(a) A PRTF staff person shall have a tuberculosis screening completed at initial employment.

(b) A PRTF staff person shall have a subsequent tuberculosis screening completed if directed by a physician, an APP, the Department of Health or a local health department.

(c) A PRTF staff person who has had a positive tuberculin skin test and a negative chest X-ray is not required to have further tuberculosis testing, unless one of the following occurs:

(1) The PRTF staff person is exposed to an active case of tuberculosis.

(2) The PRTF staff person develops a productive cough that does not respond to medical treatment within 14 days of the onset of the cough.

(d) A copy of a positive tuberculin test shall be included in the PRTF staff person's record along with the results of a chest X-ray and evaluation for chemoprophylaxis.

§ 5330.123. Serious communicable diseases or medical problem.

(a) If a PRTF staff person has a serious communicable disease as defined by the Department of Health, written

authorization from a physician or APP is required for the PRTF staff person to be present at the PRTF.

(b) The written authorization from a physician or APP shall include a statement that the PRTF staff person will not pose a serious threat to the health of the children, youth or young adults and specific instructions and precautions to be taken for the protection of the children, youth or young adults while the PRTF staff person has a communicable disease.

(c) A PRTF shall follow the written instructions and precautions specified in the written authorization from a physician or APP.

NUTRITION

§ 5330.131. Daily meals.

(a) A PRTF shall provide at least three meals and one snack a day to children, youth or young adults.

(b) There may be no more than 15 hours between an evening meal and a morning meal.

(c) If a child, youth or young adult misses a meal, a PRTF shall provide the child, youth or young adult with a meal as soon as possible.

(d) If a child, youth or young adult refuses to eat a meal, the refusal shall be documented in the child's, youth's or young adult's record and reported to the child's, youth's or young adult's treatment team.

(e) If a child, youth or young adult requests a meal after initially refusing a meal, a PRTF shall provide the meal to the child, youth or young adult when requested.

§ 5330.132. Quantity of food.

(a) The quantity of food for each meal served must meet the minimum daily requirements as recommended by the United States Department of Agriculture, unless otherwise recommended in writing by a physician or an APP for a specific child, youth or young adult.

(b) Dietary alternatives must be available for a child, youth or young adult who has food allergies, special health needs or religious beliefs regarding dietary restrictions or dietary preferences.

(c) Additional portions of meals must be available for a child, youth or young adult upon request, unless a physician or an APP has directed in writing that additional portions must not be available for the child, youth or young adult.

(d) Water must be available to a child, youth or young adult at all times.

§ 5330.133. Withholding or forcing of food.

(a) A PRTF may not withhold food or drink as a means for punishment or coercion.

(b) A child, youth or young adult may not be forced to consume food or drink.

TREATMENT SERVICES

§ 5330.141. Treatment planning requirements.

(a) A treatment team shall meet the requirements of 42 CFR 441.156 (relating to team developing individual plan of care).

(b) A treatment team leader shall ensure that only PRTF staff who are trained and experienced in the use of the modalities proposed in the treatment plan participate in its development, implementation and review.

(c) A treatment team leader shall actively involve the child's, youth's or young adult's treatment team in the treatment planning process.

(d) PRTF staff shall maintain a communication log for each child, youth or young adult that includes daily notes about the child's, youth's or young adult's behaviors and observations about the child, youth or young adult that can be used by the treatment team in the treatment planning process.

§ 5330.142. Treatment plan.

(a) The following requirements must be met prior to the development of a child's, youth's or young adult's treatment plan:

(1) A multi-disciplinary assessment and screening must be completed within 48 hours of a child's, youth's or young adult's admission to the PRTF.

(2) A psychiatric evaluation must be completed that includes an examination of the medical, psychological, social, behavioral and developmental aspects of the child, youth or young adult and reflects the need for a PRTF level of care. The psychiatric evaluation must be completed within 7 days of a child's, youth's or young adult's admission to the PRTF.

(b) The multi-disciplinary assessment and psychiatric evaluation must address all of the following:

(1) Specific service recommendations that address the reasons the child, youth or young adult was admitted to the PRTF.

(2) The child's, youth's or young adult's trauma history.

(3) The parent's, legal guardian's or caregiver's trauma history, if known.

(4) Identification of the child's, youth's or young adult's strengths.

(5) The child's, youth's or young adult's educational history and needs.

(6) Prior evaluations, assessments and screenings.

(7) Prior treatment services and their effectiveness.

(c) A child's, youth's or young adult's treatment team shall utilize the multi-disciplinary assessment, psychiatric evaluation and PRTF staff observations to formulate an individualized treatment plan for the child, youth or young adult.

(d) A child's, youth's or young adult's treatment plan shall be developed and implemented no later than 14 days after the child's, youth's or young adult's admission to the PRTF.

(e) A treatment plan must:

(1) Be designed to result in the child's, youth's or young adult's discharge at the earliest possible time from the PRTF.

(2) Identify objectives and interventions aimed at treating and eliminating behavior that may lead to the use of a manual restraint.

(3) Reflect the need for a PRTF level of care.

(4) State individualized and measurable treatment objectives.

(5) Monitor the progress of each individualized treatment objective.

(6) Identify the child's, youth's or young adult's strengths.

(7) Include the child's, youth's or young adult's plan for discharge.

(8) Document the child's, youth or young adult's achievements since the last treatment plan.

(9) Prescribe an integrated program of therapies and experiences designed to meet the child's, youth's or young adult's treatment needs.

(10) Address the impact of the child's, youth's or young adult's medical and trauma history.

(f) A PRTF shall document in the child's, youth's or young adult's record the participation of treatment team members in the development of the child's, youth's or young adult's treatment plan.

(g) Treatment team members shall sign and date the treatment plan. Objections to the treatment plan or refusal to sign the treatment plan must be documented in the child's, youth's or young adult's record.

§ 5330.143. Maintenance of treatment plan.

(a) A child's, youth's or young adult's treatment plan must be revised at least every 30 days in accordance with 42 CFR 441.155(c) (relating to individual plan of care).

(b) A child's, youth's or young adult's treatment plan must be revised when changes to service objectives and goals are identified.

(c) A PRTF shall notify the child's, youth's or young adult's parent, legal guardian or caregiver at least 14 days prior to the date of a regularly scheduled treatment plan meeting. The PRTF shall document the notification, including the method of notification.

(d) A PRTF shall implement a treatment plan in accordance with the objectives, therapies and activities that have been determined by the treatment team.

§ 5330.144. Copies of treatment plan.

A copy of the child's, youth's or young adult's treatment plan and revisions to the child's, youth's or young adult's treatment plan must be provided to all of the following:

- (1) The child, youth or young adult.
- (2) The child's, youth's or young adult's parent, legal guardian or caregiver with authorized release of information.
- (3) An individual who participated in the development of or revision to the treatment plan with authorized release of information.

§ 5330.145. Treatment services.

(a) A PRTF shall ensure the physical and psychological well-being of a child, youth or young adult are being met in accordance with age, presenting behaviors and other vulnerabilities.

(b) A PRTF shall provide therapy that addresses a child's, youth's or young adult's psychological, social, behavioral, medical, recreational, developmental needs and traumatic experiences.

(c) All of the following must be provided in accordance with the child's, youth's or young adult's treatment objectives:

- (1) Individual therapy with the child's, youth's or young adult's treatment team leader must be provided for at least 1 hour each month.
- (2) Individual therapy with the child's, youth's or young adult's mental health professional must be provided for at least 2 hours each week.

(3) Group therapy must be provided for at least 3 hours each week. PRTF staff that meet the qualifications of a mental health professional, clinical director or treatment team leader shall facilitate group therapy.

(4) Family therapy as follows:

(i) Family therapy must be provided by PRTF staff that meet the minimum qualifications of a mental health professional, clinical director or treatment team leader.

(ii) Family therapy must be scheduled at a time that is convenient for the child's, youth's or young adult's parents, legal guardians or caregivers.

(iii) Family therapy must be provided for at least 1 hour each week.

(5) Psychoeducation group therapy must be provided at least 3 hours each week. PRTF staff that meet the minimum qualifications of a mental health worker shall facilitate psychoeducation groups.

(d) If a child, youth or young adult or parent, legal guardian or caregiver refuses to receive a treatment service, the refusal to receive the service must be documented in the child's, youth's or young adult's record.

(e) Individual and group therapy and psychoeducation groups must be in person and may not be provided through two-way audio and video transmission.

(f) Family therapy may be provided in person or through secure, real-time, two-way audio and video transmission that meets technology and privacy standards required by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191).

(g) Services received by a child, youth or young adult or parent, legal guardian or caregiver, including efforts to conduct services, must be documented in the child's, youth's or young adult's record.

§ 5330.146. Education.

(a) Under 22 Pa. Code Chapters 11, 14 and 15 (relating to student attendance; special education services and programs; and protected handicapped students), a child, youth or young adult who is of compulsory school age shall participate in a school program provided by an entity that is licensed by the Department of Education.

(b) A child's, youth's or young adult's educational needs may not be a prerequisite for admission to a PRTF.

(c) Decisions regarding the education of the child, youth or young adult shall be made by the educational host district, on an individualized basis utilizing the most integrated setting appropriate, with input from the treatment team, home school district, the educational decision maker and court, if applicable.

(d) A child, youth or young adult shall have the right to an appropriate education consistent with State laws, including the opportunity to participate in extracurricular, cultural, vocational and personal enrichment activities that are reasonably available and consistent with the child's, youth's or young adult's age, developmental level and treatment plan.

§ 5330.147. Discharge.

(a) A plan for the child's, youth's or young adult's discharge shall begin on the day of admission to the PRTF and remain an active part in the child's, youth's or young adult's treatment plan.

(b) A PRTF shall provide no less than 30 days advance written notice of the pending discharge of a child, youth or young adult to all of the following:

(1) The child's, youth's or young adult's treatment team.

(2) Identified community providers, with authorized release of information.

(3) The child's, youth's or young adult's educational host district and receiving district, if known, with authorized release of information.

(c) Prior to discharging a child, youth or young adult, the treatment team shall meet to complete a plan for discharge that must be child, youth or young adult centered and include all of the following:

(1) The child's, youth's or young adult's strengths and needs.

(2) Specific and transferrable short-term and long-term objectives for the child, youth or young adult.

(3) A summary of the treatment provided, including the goals, objectives and services used.

(4) If the child, youth or young adult receives psychotropic medications, the rationale for the psychotropic medications, the dosage taken by the child, youth or young adult and the effectiveness of the psychotropic medications.

(5) The name and contact information of identified community providers.

(d) The treatment team meeting specified in subsection (c) must be documented in the child's, youth's or young adult's record.

(e) The mental health professional, in coordination with the child's, youth's or young adult's parent, legal guardian or caregiver, shall contact the community providers identified in the plan for discharge to schedule an appointment.

(f) Documentation of the contact specified in subsection (e) and date of appointment must be included in the child's, youth's or young adult's record.

(g) At least a 30-day supply of prescribed medications must be provided upon discharge to the young adult or the person to whom the child, youth or young adult is being discharged.

§ 5330.148. Level system.

The following requirements must be met if a PRTF utilizes a level system:

(1) A PRTF shall develop a written policy and procedure which utilizes trauma-informed care principles to provide incentives, structure, limit setting, encouragement and support to a child, youth or young adult.

(2) The level system must be individualized according to a child's, youth's or young adult's age and stage of development.

(3) The level system must be consistent with the child's, youth's or young adult's treatment objectives.

(4) The level system must be age and developmentally appropriate for the child, youth or young adult.

(5) The level system may not be punitive in nature.

TRANSPORTATION

§ 5330.151. Transportation.

(a) PRTF staff who provide transportation for children, youth or young adults shall comply with all applicable Federal and State laws and regulations regarding vehicles and properly transporting children, youth or young adults according to age, size, disability and other needs.

(b) A driver of a vehicle may not be counted towards the supervision ratio requirements specified in subsection (d).

(c) A driver of a vehicle and at least one PRTF staff person shall be present in the vehicle when a child, youth or young adult is being transported.

(d) There shall be at least one PRTF staff person present for every three children, youth or young adults being transported.

(e) A manual restraint may not be utilized on a child, youth or young adult during transport.

MEDICATION

§ 5330.161. Storage of medication.

(a) Prescription and nonprescription medication must be kept in an area or container that is locked and not accessible to children, youth or young adults.

(b) Prescription and nonprescription medication stored in a refrigerator must be kept in a locked container.

(c) Prescription and nonprescription medication must be stored under proper sanitary, temperature, moisture and light conditions.

(d) A PRTF shall have a written policy and procedure that meets Federal and State laws and regulations regarding the handling of discontinued and expired medication.

§ 5330.162. Labeling of medication.

(a) Prescription medication must be kept in its original container and labeled with a pharmacy label that includes all of the following:

(1) The child's, youth's or young adult's name.

(2) Name of the medication.

(3) Prescription number.

(4) Date the prescription was issued.

(5) Prescribed dosage.

(6) Name of the prescribing physician.

(b) Nonprescription medication must be stored in its original container with the original label.

§ 5330.163. Use of prescription medication.

(a) Prescription medication must be used only by the child, youth or young adult for whom the medication was prescribed.

(b) The use of pro re nata medication to control a child's, youth's or young adult's acute, episodic behavior is prohibited.

§ 5330.164. Medication log.

(a) A prescription and nonprescription medication log must be kept for each child, youth or young adult.

(b) The prescription and nonprescription medication log must be available to the treatment team upon request.

(c) A child's, youth's or young adult's medication log must include all of the following:

(1) Known allergies of the child, youth or young adult.

(2) For each prescription and nonprescription medication taken by the child, youth or young adult, all of the following:

(i) Name of the medication, including brand name and generic name.

(ii) If a prescription medication, name of the prescribing physician or APP.

(iii) If a prescription medication, prescribed dosage of the medication.

(iv) Method of administration.

(v) Time medication must be administered.

(vi) Other specific administration instructions, as applicable.

(vii) Possible side effects.

(viii) Contraindicated medications.

(ix) Name of the qualified PRTF staff specified in § 5330.168 (relating to medication administration) who distributed, administered or observed the child's, youth's or young adult's self-administration of the medication, if applicable.

(x) Time medication was administered.

§ 5330.165. Medication error.

(a) A medication error includes the following, regardless of whether the medication error resulted in an adverse reaction:

- (1) Failure to administer the prescribed medication.
- (2) Utilizing the incorrect method to administer the medication.
- (3) Administering the incorrect medication.
- (4) Administering the correct medication in an incorrect dosage.
- (5) Administering the correct medication at the incorrect time.

(b) Documentation of a medication error that includes detailed information about the medication error must be recorded in the child's, youth's or young adult's medication log.

§ 5330.166. Medication refusal.

(a) A child, youth or young adult and the child's, youth's or young adult's parent, legal guardian or caregiver has the right to refuse a prescription or nonprescription medication in accordance with applicable Federal and State laws and regulations.

(b) If a child, youth or young adult refuses to take a prescription or nonprescription medication, the refusal must be documented in the child's, youth's or young adult's medication log.

(c) A PRTF shall inform the child's, youth's or young adult's treatment team leader of the refusal to take prescription medication as soon as possible, but no later than 1 hour after the refusal.

§ 5330.167. Adverse reaction.

(a) If a child, youth or young adult experiences an adverse reaction to a prescription or nonprescription medication requiring immediate medical attention, a PRTF shall notify the parent, legal guardian or caregiver and treatment team leader prior to the next scheduled dosage, but no later than 1 hour after the adverse reaction.

(b) If a child, youth or young adult experiences an adverse reaction from a prescription or nonprescription medication not requiring immediate medical attention, a PRTF shall notify the parent, legal guardian or caregiver

and treatment team leader prior to the next scheduled dosage, but no later than 12 hours after the adverse reaction.

(c) Documentation of an adverse reaction from a prescription or nonprescription medication must be included in the child's, youth's or young adult's medication log.

(d) The treatment team leader shall review the adverse reaction and document a change to a medication in the child's, youth's or young adult's medication log.

§ 5330.168. Medication administration.

(a) Prescription and nonprescription medication, including injections, shall only be administered by the following:

- (1) Physician.
- (2) Physician assistant.
- (3) Certified registered nurse practitioner.
- (4) RN.
- (5) LPN.

(6) PRTF staff who meet the requirements of § 5330.169 (relating to medication administration training).

(7) A child, youth or young adult who meets the requirements of § 5330.170 (relating to self-administration).

(b) Prescription and nonprescription medication must be administered in accordance with the instructions for the medication.

§ 5330.169. Medication administration training.

(a) PRTF staff who have completed and passed a Department-approved medication administration course within the past 2 years are permitted to administer oral, inhaled, topical, eye and ear drop medications, diabetes medications and epinephrine injections for insect bites or other allergic reactions.

(b) PRTF staff who have completed and passed a Department-approved medication administration course and have completed and passed a diabetes patient education program within the past 12 months that meets the Standards for Diabetes Patient Education Programs of the Department of Health are permitted to administer insulin injections.

(c) PRTF staff medication administration training must be documented and must include the name of PRTF staff trained, training date, training source, name of qualified trainer and length of training.

§ 5330.170. Self-administration.

(a) The following requirements must be met for a child, youth or young adult to self-administer oral, inhaled, topical, eye and ear drop medications, diabetes medications and epinephrine injections for insect bites or other allergic reactions:

(1) Documented approval from a prescribing physician stating that a child, youth or young adult has the knowledge, skills and abilities to self-administer the medication.

(2) The child, youth or young adult recognizes the prescription or nonprescription medication and knows the condition or illness for which the prescription or nonprescription medication is being taken, the correct dosage and when to take the prescription or nonprescription medication.

(3) A PRTF staff person who meets the qualifications of § 5330.168(a)(1)—(6) (relating to medication administration) is physically present throughout the self-administration and immediately records the administration in the child's, youth's or young adult's medication log.

RESTRICTIVE PROCEDURES

§ 5330.181. Use of manual restraints.

(a) A manual restraint is the only restrictive procedure permitted in a PRTF.

(b) A manual restraint may only be used if a child, youth or young adult poses an imminent threat to physically harm themselves or others.

(c) Children, youth or young adults have the right to be free from a manual restraint used as a means of coercion, discipline, convenience or retaliation.

(d) A PRTF staff person shall only use a manual restraint if the PRTF staff person has completed training in the use of manual restraints that is consistent with 42 CFR 483.376 (relating to education and training) and is provided by an individual who meets the qualifications in 42 CFR 483.376(c).

(e) A PRTF shall develop a written policy and procedure for the use of manual restraints that includes all of the following:

(1) The requirements of subsections (a)—(d).

(2) Therapeutic approaches, such as goal planning, which are aimed at de-escalating, redirecting and releasing aggression through healthy channels, counseling and removing a child, youth or young adult from an over-stimulating environment.

(3) A performance improvement process that must be reviewed every 30 days to monitor and reduce the use of manual restraints.

(4) Contact information, including the phone number and mailing address, for the appropriate State protection and advocacy organization.

(f) On the day of admission, a PRTF shall do all of the following:

(1) Provide a copy of the restrictive procedure policy to the child, youth or young adult and the parent, legal guardian or caregiver.

(2) Inform the child, youth or young adult and the parent, legal guardian or caregiver of the PRTF's restrictive procedure policy.

(3) Obtain a signed acknowledgment from a youth or young adult or the child's, youth's or young adult's parent, legal guardian or caregiver that the restrictive procedure policy was received and reviewed. The signed acknowledgment must be filed in the child's, youth's or young adult's record.

§ 5330.182. Ordering a manual restraint.

(a) The ordered manual restraint must be the least restrictive manual restraint.

(b) An order for a manual restraint must align with all of the following conditions relating to the child, youth or young adult:

(1) The results of the assessment, screening and evaluation specified in § 5330.142 (relating to treatment plan).

(2) Chronological and developmental age.

(3) Size.

(4) Gender.

(5) Physical condition.

(6) Psychiatric condition.

(7) Personal trauma history.

(8) Personal abuse history.

(c) A manual restraint may be ordered only when a child, youth or young adult poses an imminent threat to physically harm themselves or others and both of the following have occurred:

(1) Every attempt has been made to de-escalate the child's, youth's or young adult's behavior.

(2) Less intrusive techniques and resources appropriate to address the behavior have been tried and failed.

(d) A manual restraint may not be ordered as a standing order or on an as-needed basis.

(e) If a child's, youth's or young adult's treatment team leader is available to the PRTF staff and certified in the use of manual restraints, the treatment team leader is the only PRTF staff person that may order a manual restraint.

(f) If the treatment team leader is not available to PRTF staff or if the treatment team leader is available but not certified in the use of manual restraints, PRTF staff who meet the qualifications specified in §§ 5330.43 or 5330.45 (relating to medical director; and clinical director) or an APP may order a manual restraint provided the ordering PRTF staff are certified in the use of manual restraints.

(g) An order for a manual restraint must be received by an RN or LPN while the manual restraint is being used by PRTF staff or immediately after the manual restraint ends.

(h) A child's, youth's or young adult's treatment team leader shall be contacted and informed about the use of a manual restraint within 48 hours of its use, unless the manual restraint was ordered by the treatment team leader.

(i) An order for a manual restraint and the application of a manual restraint may not exceed 30 minutes.

(j) An order for a manual restraint must include all of the following and be documented in the child's, youth's or young adult's record:

(1) The name of the qualified PRTF staff person who ordered the manual restraint.

(2) The date and time a manual restraint was ordered.

(3) The type of manual restraint that was ordered.

(4) The length of time for which a manual restraint was ordered.

(5) The start time and end time the manual restraint was applied.

(k) An order for a manual restraint expires once the manual restraint of the child, youth or young adult ends and a new order must be obtained prior to the initiation of a new manual restraint.

(l) The qualified PRTF staff who ordered a manual restraint shall be available in person or by telephone for consultation with PRTF staff administering and observing the manual restraint throughout the duration of a manual restraint.

§ 5330.183. Prohibited restrictive procedures.

- (a) The following restrictive procedures are prohibited:
- (1) Seclusion.
 - (2) Exclusion.
 - (3) Chemical restraint.
 - (4) Mechanical restraint.
- (5) A manual restraint that places a child, youth or young adult in a prone position or applies pressure or weight on the child's, youth's or young adult's respiratory system.
- (6) Aversive conditioning.
- (7) A restrictive procedure that limits a child's, youth's or young adult's food, drink or access to a toilet.
- (b) Seclusion and exclusion do not include the use of a time out as defined in this chapter.
- (c) Exclusion does not occur if a PRTF staff person remains in the exclusion area with the child, youth or young adult.

§ 5330.184. Restrictive procedure plan.

- (a) A restrictive procedure plan must be written within 24 hours of a child's, youth's or young adult's admission to a PRTF and prior to the use of a manual restraint.
- (b) A restrictive procedure plan must be developed and revised with the participation of the treatment team.
- (c) A restrictive procedure plan must be reviewed, approved, signed and dated by treatment team members at least every 30 days.
- (d) A restrictive procedure plan must include all of the following:
- (1) Known observable signals that occur prior to any behaviors that put a child, youth or young adult at risk for a manual restraint and the suspected reason for the behavior.
 - (2) Desired behavioral outcomes, documented in measurable terms.
 - (3) Interventions to be used to modify or eliminate behaviors that put a child, youth or young adult at risk for a manual restraint.
 - (4) Physical or behavioral health needs or past trauma that may contraindicate the use of a specific manual restraint.
 - (5) A restrictive procedure plan must be implemented as written.
 - (6) Copies of a restrictive procedure plan must be kept in a child's, youth's or young adult's record.

§ 5330.185. Application of a manual restraint.

- (a) A PRTF shall have at least two PRTF staff persons present during the application of a manual restraint.
- (b) At least one PRTF staff person who is medically trained to provide emergency first aid and cardiopulmonary resuscitation shall be present throughout the use of a manual restraint.
- (c) At least one PRTF staff person who has completed the required manual restraint training and who is not involved in applying a manual restraint shall be physically present throughout the use of a manual restraint to continually assess the physical and psychological well-being of the child, youth or young adult and to oversee that the manual restraint is being applied correctly.

(d) The child's, youth's or young adult's physical and psychological condition must be documented in the child's, youth's or young adult's medical record at least every 10 minutes during a manual restraint.

(e) Both of the following must occur at 10-minute increments during the application of a manual restraint:

- (1) The manual restraint is released.
- (2) The child, youth or young adult is transitioned to another approved manual restraint technique.

(f) PRTF staff who are directly or indirectly involved in a manual restraint shall reduce or eliminate influences that may impede the child, youth or young adult from de-escalating.

(g) During a manual restraint, a child's, youth's or young adult's basic needs and rights must continue to be met.

(h) A manual restraint must end when the earliest of the following occurs:

- (1) The order for a manual restraint expires.
- (2) The manual restraint has been applied for 30 minutes.
- (3) When the child, youth or young adult no longer poses an imminent danger of physical harm to self or others.

(i) Within 30 minutes of initiation of a manual restraint or immediately after a manual restraint is removed, a treatment team leader, physician, APP or RN, who is certified in the use of manual restraints, shall conduct a face-to-face assessment of all of the following:

- (1) The child's, youth's or young adult's physical and psychological condition.
- (2) The child's, youth's or young adult's behavior.
- (3) Appropriateness of the intervention measures.
- (4) Complications caused by the use of the manual restraint.

(j) The face-to-face assessment specified in subsection (i) must be in person and may not occur through secure, real-time, two-way audio and video transmission.

(k) A PRTF shall notify the child's, youth's or young adult's parent, legal guardian or caregiver of the manual restraint within 1 hour after the manual restraint has ended.

§ 5330.186. Injuries from a manual restraint.

- (a) A PRTF shall immediately obtain medical treatment from qualified medical personnel for a child, youth or young adult injured as a result of a manual restraint.
- (b) Injuries that occur as a result of a manual restraint, including injuries to PRTF staff, must be documented in the child's, youth's or young adult's record.

§ 5330.187. Documentation of a manual restraint.

- (a) The PRTF staff shall document the use of a manual restraint in the child's, youth's or young adult's record by the end of the shift in which the manual restraint was concluded.
- (b) Documentation of the use of a manual restraint must include all of the following:
- (1) The requirements of § 5330.182(j) (relating to ordering a manual restraint).
 - (2) The requirements of § 5330.185(d) (relating to application of a manual restraint).

(3) The time and results of the face-to-face assessment specified in § 5330.185(i).

(4) The name of the qualified medical personnel that completed the child's, youth's or young adult's face-to-face physical and psychological assessment during and after the manual restraint.

(5) Description of the emergency safety situation that created the need for the manual restraint.

(6) Description of the attempts made to de-escalate the child's, youth's or young adult's behavior.

(7) Description of the less intrusive techniques and resources that are appropriate to address the child's, youth's or young adult's behavior that were tried and failed.

(8) The name and title of PRTF staff involved in the ordering, application and observation of the manual restraint.

(9) The date and time the treatment team leader was consulted if the treatment team leader did not order the manual restraint.

(10) Written statements from PRTF staff describing the events prior to, during and following the manual restraint from each PRTF staff person who was directly involved or who observed the manual restraint.

(11) The date, time and method the PRTF used to contact the child's, youth's or young adult's parent, legal guardian or caregiver regarding the use of the manual restraint and the name of the PRTF staff person that contacted the child's, youth's or young adult's parent, legal guardian or caregiver.

(c) A verbal order for a manual restraint must be verified in writing by the qualified PRTF staff person who ordered the manual restraint and documented in the child's, youth's or young adult's record within 48 hours of the verbal order.

§ 5330.188. Debriefing.

(a) A PRTF shall have a written policy and procedure on debriefing after the use of a manual restraint.

(b) Within 24 hours after the use of a manual restraint, a face-to-face discussion with the child, youth or young adult must occur and include all of the following:

(1) PRTF staff involved in the manual restraint, except when the presence of a particular PRTF staff person may jeopardize the well-being of the child, youth or young adult.

(2) Representatives from the child's, youth's or young adult's treatment team.

(3) The child's, youth's or young adult's parent, legal guardian or caregiver, if available.

(c) The discussion specified in subsection (b) must provide the child, youth or young adult; parent, legal guardian or caregiver; and PRTF staff the opportunity to discuss the circumstances resulting in the use of a manual restraint and strategies to be used by PRTF staff, the child, youth, young adult or others that may prevent the future use of a manual restraint.

(d) Within 24 hours after the use of a manual restraint, the PRTF staff involved in the manual restraint, supervisory and administrative staff shall conduct a debriefing that includes, at a minimum, a review and discussion of all of the following:

(1) The circumstances that led to the use of the manual restraint, including a discussion of the precipitating factors.

(2) Alternative techniques that may have prevented the use of a manual restraint.

(3) The procedures, if any, that PRTF staff are to implement to prevent a recurrence of the use of a manual restraint.

(4) The outcome of the manual restraint, including any physical or emotional injuries resulting from the use of the manual restraint.

(e) PRTF staff involved in a manual restraint that results in an injury to a child, youth or young adult or PRTF staff shall meet with PRTF supervisory staff within 24 hours of the manual restraint and evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

(f) PRTF staff shall document in the child's, youth's or young adult's record the discussions required by subsections (b), (d) and (e), including the names of the PRTF staff who were present, the names of PRTF staff that were excused and any changes to the child's, youth's or young adult's treatment plan as a result of the discussion.

§ 5330.189. Time out.

(a) A child, youth or young adult in a time out may not be physically prevented from leaving the time out area.

(b) Time outs may take place in areas away from other children, youth or young adults or in areas where other children, youth or young adults are having activities.

(c) PRTF staff shall directly supervise the child, youth or young adult while in a time out.

(d) A time out may not be used in a punitive manner or to exclude or seclude a child, youth or young adult from activities.

§ 5330.190. Attestation.

(a) A PRTF shall attest, in writing, in accordance with 42 CFR 483.374 (relating to facility reporting) that the PRTF is complying with CMS's standards on the use of restrictive procedures and this chapter's requirements on the use of restrictive procedures.

(b) The attestation shall include the signature of the PRTF program director.

(c) A PRTF shall provide an attestation to the Department annually.

(d) A PRTF enrolling in the Medical Assistance Program shall provide the attestation required by subsection (a) when it executes a provider agreement with the Department.

(e) Within 5 days of receiving notification from the Department of Health that it has determined that the PRTF is out of compliance with 42 CFR Part 483, Subpart G (relating to condition of participation for the use of restraint or seclusion in psychiatric residential treatment facilities providing inpatient psychiatric services for individuals under age 21) and must close, the PRTF shall provide the Department with the PRTF's plans for the orderly transfer of children, youth or young adults.

SECURE PRTF

§ 5330.201. Requirements for a secure PRTF.

(a) A PRTF must be designated as a secure PRTF when egress from the PRTF, or a portion of the PRTF, is prohibited through one of the following mechanisms:

- (1) Internal locks within the building or exterior locks.
- (2) Secure fencing around the perimeter of the PRTF.
- (b) A secure PRTF shall have a written fire safety approval that is appropriate for a secure setting from the Department of Labor and Industry, the Department of Health or the appropriate local building authority under the Pennsylvania Construction Code Act (35 P.S. §§ 7210.101—7210.1103) prior to applying for an initial certificate of compliance.
- (c) A secure PRTF shall meet all of the following staffing requirements:
 - (1) During awake hours, at least one mental health worker or PRTF staff person who meets the qualifications of a mental health worker shall provide supervision to every four children, youth or young adults.
 - (2) During sleeping hours, at least one mental health worker or PRTF staff person who meets the qualifications of a mental health worker shall provide supervision to every eight children, youth or young adults.
 - (d) No more than two children, youth or young adults may share a bedroom in a secure PRTF.
 - (e) A fence that surrounds the secure PRTF may not have razor ribbon or barbed wire attached to it.
 - (f) A secure PRTF may not have security bars attached to doors and windows.

§ 5330.202. Exceptions for a secure PRTF.

A secure PRTF shall comply with the requirements of this chapter, except for the following:

- (1) Section 5330.42(d)(1) (relating to staff requirements).
- (2) Section 5330.42(e)(1).
- (3) Section 5330.82(c) (relating to bedrooms).
- (4) Section 5330.92 (relating to unobstructed egress).

RECORDS

§ 5330.211. Emergency contact information.

- (a) Emergency contact information for a child, youth or young adult must be documented in a child’s, youth’s or young adult’s record and accessible to PRTF staff.
- (b) Emergency contact information for a child, youth or young adult must include all of the following:
 - (1) The name, address and telephone number of a parent, legal guardian or caregiver to be contacted in case of an emergency.
 - (2) The name, address and telephone number of a child’s, youth’s or young adult’s physician and health insurance.
 - (3) The name, address and telephone number of the parent, legal guardian or caregiver permitted to give consent for medical treatment.
 - (c) The emergency contact information for each child, youth or young adult shall accompany the child, youth or young adult when the child, youth or young adult is not at the PRTF.

§ 5330.212. Child, youth or young adult record.

- (a) A PRTF shall store child, youth or young adult records in a secure location.
- (b) A PRTF shall maintain a record for each child, youth or young adult it serves that includes all of the following:

- (1) Identifying information as follows:
 - (i) The child’s, youth’s or young adult’s name, gender, gender identity, admission date, birth date and social security number.
 - (ii) The child’s, youth’s or young adult’s race and ethnicity, height, weight, hair color, eye color and identifying marks.
 - (iii) Dated photograph of the child, youth or young adult taken within the past year.
 - (iv) The language spoken and understood by the child, youth or young adult and the primary language used by the child’s, youth’s or young adult’s parent, legal guardian or caregiver if other than English or other means of communication used by the child, youth or young adult or the child’s, youth’s or young adult’s parent, legal guardian or caregiver.
 - (v) The child’s, youth’s or young adult’s religious affiliation.
 - (vi) The name, address and telephone number of the person to be contacted in the event of an emergency.
- (2) Independent certification of need for PRTF services.
- (3) Medical and behavioral records, including medication logs, assessments, screenings and treatment updates.
- (4) A psychiatric evaluation and updates to the psychiatric evaluation.
- (5) A treatment plan and updates to the treatment plan.
- (6) Documentation of efforts to coordinate care with other services and community supports.
- (7) Documentation of each service provided, including all of the following:
 - (i) Date and time a service is provided, duration of service and setting where the service is provided.
 - (ii) Identification of the service provided to address a goal in the treatment plan.
 - (iii) Description of the outcome of the service provided.
 - (iv) Signature of the PRTF staff providing the service.
- (8) Documentation of the reason why a service was not provided in accordance with the treatment plan.
- (9) Consent to treatment and authorized release of information forms.
- (10) Plan for discharge in accordance with § 5330.147 (relating to discharge).
- (11) Documentation of the use of manual restraints as required by § 5330.187 (relating to documentation of a manual restraint).
- (12) Applicable court orders.
- (13) Educational records.
- (14) Reportable incidents as specified in § 5330.14 (relating to reportable incidents).
- (15) Documentation of psychotropic medication reviews, including the clinical rationale for the psychotropic medication.
- (16) Signed notification of rights and grievance procedures specified in §§ 5330.31 and 5330.32 (relating to rights; and grievance procedures).
- (17) Signed notice of confidentiality in accordance with the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191).

(c) A child's, youth's or young adult's record must be:

(1) Legible.

(2) Signed and dated by the PRTF staff writing in the record.

(3) Reviewed for quality by the program director, clinical director or designated quality assurance staff within 6 months of the initial entry. After the initial review, subsequent reviews may be limited to new additions to the record and must occur at least annually.

(d) A child's, youth's or young adult's record must be kept for at least 4 years following the child's, youth's or young adult's discharge from the PRTF or until any audit or litigation is resolved, whichever is later.

§ 5330.213. PRTF record.

(a) A PRTF shall store its records in a secure location.

(b) A PRTF shall maintain records that contain all of the following for at least 4 years:

(1) Inspection reports, certifications or licenses issued by Federal, State and local agencies.

(2) A detailed service description in accordance with § 5330.11 (relating to service description) and all updates to the service description.

(3) A copy of the emergency preparedness plan specified in § 5330.19 (relating to emergency preparedness).

(4) Human resources policies and procedures.

(5) Written agreements to coordinate services in accordance with § 5330.12 (relating to coordination of services) that must be maintained by a PRTF and updated annually.

(6) Daily schedules for services and activities.

(7) If the PRTF is not connected to a public water system, results of water tests performed by the Department of Environmental Protection.

(8) Quality assurance plans in accordance with § 5330.221 (relating to quality assurance requirements).

(c) A PRTF shall maintain PRTF staff personnel records that include all of the following for at least 4 years after the PRTF staff is no longer employed by the agency:

(1) Job descriptions.

(2) Work schedules and time sheets.

(3) Criminal history checks and child abuse certifications required by 23 Pa.C.S. §§ 6301—6388 (relating to Child Protective Services Law) and Chapter 3490 (relating to protective services).

(4) Documentation of PRTF staff credentials and qualifications.

(5) Documentation of required trainings, including completion of continuing education credits required for professionally licensed PRTF staff in accordance with the applicable professional regulations.

(6) Documentation of PRTF staff health assessments.

§ 5330.214. Record retention and disposal.

A PRTF shall secure, maintain and dispose of records, both written and electronic, that contain protected health information in accordance with applicable Federal and State privacy and confidentiality laws and regulations.

QUALITY ASSURANCE

§ 5330.221. Quality assurance requirements.

(a) A PRTF shall establish and implement a written quality assurance plan that meets all of the following:

(1) Identifies the methodology for PRTF and individual record reviews, including all of the following:

(i) Method for establishing sample size of PRTF and individual records for review.

(ii) Frequency of individual records review to prepare for the annual report.

(iii) Qualifications of PRTF staff who perform the review of records.

(2) Provides an annual report of services provided by the PRTF that includes all of the following:

(i) Review of individual records for compliance with this chapter.

(ii) Review of individual and parent, legal guardian or caregiver satisfaction information.

(iii) Assessment of delivered services outcomes and if treatment plan goals have been completed.

(iv) Evaluation of compliance with the PRTF's approved service description.

(v) Analysis of manual restraint usage.

(b) A PRTF shall make annual reports available to the public upon request.

(c) A PRTF shall provide written notification that a copy of the annual report may be requested at any time by a child, youth, young adult, parent, legal guardian or caregiver upon the child's, youth's or young adult's admission to the PRTF.

WAIVERS

§ 5330.231. Waivers.

(a) A PRTF may submit a written request to the Department for a waiver of a specific regulation in this chapter.

(b) The Department may grant a waiver unconditionally or subject to conditions that must be met. The Department may revoke a waiver if conditions required by the waiver are not met.

(c) A waiver request will be granted only in exceptional circumstances and if all of the following are met:

(1) The waiver does not jeopardize the health and safety of the children, youth or young adults.

(2) The waiver will not adversely affect the quality of services.

(3) The intent of the requirement to be waived will still be met.

(4) Children, youth or young adults will benefit from the waiver of the requirement.

(5) The waiver does not violate a Federal or State statute or regulation or local ordinance.

(d) The scope, definitions and purpose of this chapter may not be waived.

[Pa.B. Doc. No. 24-1575. Filed for public inspection November 1, 2024, 9:00 a.m.]