

Regulatory Analysis Form

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REGULATORY REVIEW COMMISSION



Cocodrilli

IRRC Number:

#2083

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine

(2) I.D. Number (Governor's Office Use)

16A-4911

(3) Short Title

Requirements of the Health Care Services Malpractice Act.

(4) PA Code Cite

49 Pa. Code §16.32

(5) Agency Contacts & Telephone Numbers

Primary Contact: Gerald S. Smith, Counsel
State Board of Medicine (717) 783-7200
Secondary Contact: Joyce McKeever, Deputy Chief
Counsel, Department of State (717) 783-7200

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation deletes unnecessary language.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 8 of the Medical Practice Act of 1985, Act of December 20, 1985, P.L. 457, as amended, 63 P.S. §422.8.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation deletes duplicative language.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

N/A

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

N/A

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

None.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

N/A

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

None.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY +1	FY +2	FY +3	FY +4	FY +5
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
	N/A			

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

None.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

None.

Regulatory Analysis For

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

N/A

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

Ongoing.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

#2083

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated by:

Copy below is approved as
to form and legality.
Executive or Independent
Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Medicine
(AGENCY)

Mary E Dunlop

DOCUMENT/FISCAL NOTE NO. 16A-4911

DATE OF ADOPTION: _____

9/17/99
DATE OF APPROVAL

DATE OF APPROVAL

BY: Daniel B Kimball Jr
Daniel B. Kimball, Jr., M.D.

(Deputy General Counsel
(Chief Counsel,
Independent Agency
(Strike inapplicable
title)

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if
applicable. No Attorney
General approval or
objection within 30 day
after submission.

ORDER OF FINAL/PROPOSED OMITTED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
State Board of Medicine
49 Pa. Code, Chapter 16
Requirements of the Health Care Services Malpractice Act

The State Board of Medicine ("Board") hereby amends its regulations at 49 Pa. Code §16.32, pertaining to requirements of the Health Care Services Malpractice Act. The amendments are set forth in Annex A.

Amendments to the Health Care Services Malpractice Act, the Act of October 15, 1975, P.L. 390, as amended, 40 P.S. §§1301.101-1301.1006, increased minimum basic malpractice insurance amounts from \$200,000/\$600,000 to \$300,000/\$900,000 for policies written in years 1997-1998; \$400,000/\$1,200,000 for years 1999-2000 policies; and \$500,000/\$1,500,000 for year 2001, and thereafter.

Rather than unnecessarily duplicating provisions of the Health Care Services Malpractice Act and periodically updating the regulations, the Board has retained the cross-reference to the statute but has eliminated repetition of the dollar amounts.

Section 204 of the Commonwealth Documents Law, Act of July 31, 1968, P.L., 45 P.S. §1204, provides that proposed rulemaking may be omitted if the regulation relates to the interpretation of a self-executing act of Assembly. The minimum basic malpractice coverage amounts are established at Section 701 of the Health Care Services Malpractice Act, 40 P.S. §1301.701. Thus, these regulations relate to the self-executing provisions of the Health Care Services Malpractice Act. Accordingly, proposed rulemaking is unnecessary.

A. Effective Date

The amendments would be effective upon publication of the final form regulations in the Pennsylvania Bulletin.

B. Statutory Authority

The amendments are authorized under Section 8 of the Medical Practice Act, Act of December 20, 1985, P.L. 457, as amended, 63 P.S. §422.8.

C. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation the Board considered the least restrictive alternative to regulate costs for services requested by licensees and applicants.

D. Fiscal Impact and Paperwork Requirements

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

F. Regulatory Review

Pursuant to Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 P.L. 47, re-enacting and amending the Act of June 25, 1982 (P.L. 633, No. 181), as amended, (71 P.S. §745.5.1(c), a copy of the regulation was submitted on January 18, 2000, to the Independent Regulatory Review Commission ("IRRC") and the Chairmen of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee ("Committees"). In addition, at the same time, the regulation was submitted to the Attorney General for review and comment pursuant to the Commonwealth Attorneys Act.

Under Section 5(e) of the Regulatory Review Act, the regulation was (deemed) approved by the House and Senate Committees on _____, and by IRRC on _____.

G. Additional Information

Individuals who desire information are invited to submit inquiries to Cindy L. Warner, Board Administrator, State Board of Medicine, P.O. Box 2649, Harrisburg, Pennsylvania 17105-2649. The telephone number of the Board is (717) 783-1400.

The State Board of Medicine finds:

1. That public notice of intention to amend its regulations as adopted by this Order pursuant to the procedures specified in Sections 201 and 202 of the Commonwealth Documents Law, 45 P.S. §§1201 and 1202, has been omitted pursuant to the authority contained in Sections 204(1) and 204(3) of the Commonwealth Documents Law, 45 P.S. §§1204(1) and 1204(3), because the Board has, for good cause, found that the procedures specified in Sections 201 and 202 of the Commonwealth Documents Law, 45 P.S. §§1201 and 1202, are, in this circumstance, unnecessary because the provisions repealed were found to be duplicative of self-executing statutory

language.

2. That the amendment of the regulations of the Board in the manner provided in this Order is necessary and appropriate for the administration of its authorizing statute.

The State Board of Medicine, acting under its authorizing statute, orders:

- A. Regulations of the State Board of Medicine are hereby amended at 49 Pa. Code §16.32, as set forth in Annex A attached hereto.
- B. The Chairman of the State Board of Medicine shall submit this Order and attached Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality as required by law.
- C. The Chairman of the State Board of Medicine shall certify this Order and attached Annex A and deposit the same with the Legislative Reference Bureau as required by law.
- D. This Order shall become effective immediately upon publication in the Pennsylvania Bulletin.

ANNEX A
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 16. STATE BOARD OF MEDICINE
GENERAL PROVISIONS

* * *

§16.32. Requirements of the Health Care Services Malpractice Act.

An applicant for licensure or a licensee applying for biennial review as required by the Health Care Services Malpractice Act (40 P.S. §§1301.101-1301.1006), and the regulations pertaining thereto, shall maintain the required amount of professional liability insurance or an approved self-insurance plan and shall have paid the required fee and surcharges as set forth therein.

[A physician or surgeon licensed in this Commonwealth shall qualify under one of the following and provide the required information:

- (1) Proof of coverage at \$200,000/\$600,000 if more than 50% of the practice is conducted in this Commonwealth and proof that the insurance company has paid the surcharge into the Medical Professional Liability Catastrophe Loss Fund.
- (2) Proof of basic coverage insurance in the amount of \$200,000/\$600,000 or an approved self-insurance plan if 50% or less of the practice is in this Commonwealth. The licensee is not required to pay the required surcharge nor is the licensee entitled to participate in the Medical Professional Liability Catastrophe Loss Fund.
- (3)] A licensee practicing solely as a Federal employee is not required to participate in the professional liability insurance program, nor is the licensee required to comply with the Health Care Services Malpractice Act.
- [(4)] A licensee who provides no medical service in this Commonwealth is not required to pay the arbitration fees

or comply with the insurance requirements of the Health Care Services Malpractice Act. Proof of non-practice shall be furnished by notarized statement.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF MEDICINE
116 Pine Street, Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-1400

January 18, 2000

The Honorable John R. McGinley, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2
333 Market Street
Harrisburg, Pennsylvania 17101

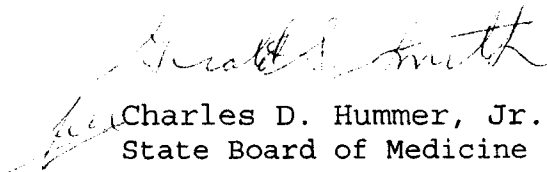
Re: Final Regulation with Notice of Proposed Rulemaking Omitted of
the State Board of Medicine pertaining to Requirements of the
Health Care Services Malpractice Act (16A-4911)

Dear Chairman McGinley:

Enclosed is a copy of a Final Regulation with Notice of Proposed
Rulemaking Omitted of the State Board of Medicine pertaining to
Requirements of the Health Care Services Malpractice Act.

The Board stands ready to assist your Commission in its review.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles D. Hummer, Jr.", written over a printed name.

Charles D. Hummer, Jr., M.D., Chairman
State Board of Medicine

CDH/GSS:hmd

Enclosures

c: Steven V. Turner, Chief Counsel
Department of State
Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Gerald S. Smith, Counsel
State Board of Medicine
State Board of Medicine

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

RECEIVED

I.D. NUMBER:	16a-4911	2000 JAN 18 PM 1:50
SUBJECT:	Requirements of the Health Care Services Malpractice Act	INDEPENDENT REGULATORY REVIEW COMMISSION
AGENCY:	DEPARTMENT OF STATE - State Board of Medicine	

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1-18-00	<i>Don A Clark</i>	HOUSE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
1-18-00	<i>Tami Tarase</i>	SENATE COMMITTEE ON PROFESSIONAL LICENSURE
1/18/00	<i>Kim C Garner</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU