

Regulatory Analysis Form		RECEIVED This space for use by IRRRC 2007 JUN 25 PM 2:09 INDEPENDENT REGULATORY REVIEW COMMISSION	
(1) Agency Transportation		IRRC Number: 2482	
(2) I.D. Number (Governor's Office Use) #18-402			
(3) Short Title School Bus Drivers			
(4) PA Code Cite 67 Pa. Code, Chapter 71		(5) Agency Contacts & Telephone Numbers Primary Contact: Janet Dolan (717) 787-4701 Secondary Contact: Chris A. Miller (717) 787-6453	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The purpose of these amendments is to allow chiropractors to administer the physical examination required for school bus drivers. Pennsylvania law requires a school bus driver to have a physical examination every year.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Authority for this regulation is contained in § 1509 of the Vehicle Code, Act of June 17, 1976, P.L. 162, as amended (75 Pa.C.S. § 1509).			
(10) Is the regulation mandated by any federal or state law or court order, or federal regulations? If yes, cite the specific law, case or regulation, and any deadlines for action.			

Act 76 of 2004 amended 75 Pa.C.S. § 1508.1 requiring the Department to promulgate regulations to authorize specific classes of licensed practitioners of the healing arts to conduct examinations required for the issuance of a driver's license and a school bus driver endorsement.

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

Pennsylvania law requires a school bus driver to have a physical examination. According to existing regulations the only health care providers who can perform that physical are a licensed physician, a certified registered nurse practitioner or a physician's assistant. Chiropractors are currently considered by health insurance companies to be portal of care practitioners. This means they are regarded as primary care physicians, permitted to furnish necessary patient care for health maintenance. Chiropractors are also allowed, by federal regulation, to conduct the medical examinations for commercial drivers required every two years by the Federal Highway Administration under Motor Carrier Safety regulations. Since the exclusion of chiropractors from the list of health care providers is inconsistent with current health care practices and federal regulations, chiropractors should be added to Pa. Code Title 67, Chapter 71 as one of the providers who can give the physical examination for the school bus driver endorsement.

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

Failure to amend these regulations will continue to prohibit chiropractors from performing the school bus driver physical examination.

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

Individuals who use a chiropractor as their primary care physician will be able to get the examination from that physician. Chiropractors may benefit by being able to give the examination. The precise number of individuals who will benefit cannot be determined.

(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.)

There should be no adverse impact on any individuals from this amendment to the regulation.

(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.)

It is not known precisely how many individuals will be required to comply. In addition to chiropractors, school districts and independent contractors operating school buses or school bus

services will be required to comply with this regulation. Pennsylvania has 501 public school districts and over 2,000 private schools.

(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.

These proposed amendments are the result of in-depth discussions with the Pennsylvania Chiropractic Association.

(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.

The costs and/or savings to the regulated community resulting from these amendments are marginal and cannot be calculated with any precision.

(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.

There should be no costs and/or savings to local governments resulting from these amendments to the regulation.

(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.

There should be no costs and/or savings to state government resulting from these amendments to the regulation.

(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 Year	FY + 1 Year	FY + 1 Year	FY + 3 Year	FY + 4 Year	FY + 5 Year
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated Community:	N/A					
Local Government:	N/A					
State Government:	N/A					

Total Savings	N/A					
COSTS:	N/A					
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Costs	N/A					
REVENUE LOSSES:	N/A					
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Revenue Losses	N/A					

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

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

Program	FY-3	FY-2	FY-1	Current FY
Appropriation 183	\$ 118,558,000	\$ 124,925,000	\$ 125,958,000	\$129,459,000

(21) Using 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.

There were no nonregulatory alternatives considered. The change in the health care practitioners who could give the physical examination could not be effected without amendment of the regulation.

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

No alternative regulatory schemes were considered.

(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.

There are no applicable federal standards governing the state's licensing of drivers.

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

This regulation will not put Pennsylvania at a competitive disadvantage vis a vis other states.

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

These amendments will not affect other Department regulations or the regulations of any other Commonwealth agency.

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

No public hearings on these amendments are scheduled at this time. Should public comment on these proposed amendments warrant, public hearings may be held.

(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.

These amendments will not change any paperwork requirements.

(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.

These amendments are all designed to meet the particular needs of individuals who use a chiropractor as their primary care physician.

(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?

These amendments will become effective upon publication in final form in the *Pennsylvania Bulletin*.

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

These provisions will be reviewed periodically as appropriate by the Department and the Department's Medical Advisory Board.

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE
LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

2007 JUN 23 PM 2:07

INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

By: _____
(Deputy Attorney General)

Date of Approval

Check if applicable
Copy not approved. Objections attached.

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

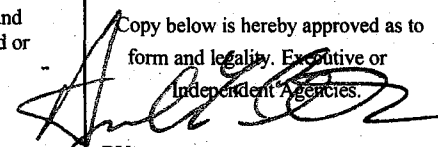
**Department
of
Transportation**
(Agency)

DOCUMENT/FISCAL NOTE NO. # 18-402

DATE OF ADOPTION _____

BY Allen D. Siehler
Secretary of Transportation

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



BY Andrew C. Clark
JUN 20 2007

(Date of Approval)

(Deputy General Counsel)
~~(Chief Counsel, Independent Agency)~~
(Strike Inapplicable Title)

Check if applicable. No attorney
General Approval or Objection within
30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF TRANSPORTATION

Title 67. Transportation

Part I. Department of Transportation

Subpart A. Vehicle Code Provisions

Article IV. Licensing

Chapter 71. School Bus Drivers

Title 67. Transportation
Part I. Department of Transportation
Subpart A. Vehicle Code Provisions
Article IV. Licensing
Chapter 71. School Bus Drivers
Notice of Final Rulemaking

List of Commenters

Rosemary Chiavetta, Esquire
Chiavetta Consulting
on behalf of
Pennsylvania Chiropractic Association
800 North Third Street, Suite 102
Harrisburg, Pennsylvania 17102

Gary S. Horwin, DC, President
Chiropractic Fellowship of Pennsylvania
908 North Second Street
Harrisburg, Pennsylvania 17102

William L. Larder, MD, President
Pennsylvania Medical Society
777 East Park Drive
P.O. Box 8820
Harrisburg, Pennsylvania 17105-8820

John S. Jordan, CAE, Executive Vice President
Pennsylvania Academy of Family Physicians Foundation
2704 Commerce Drive, Suite A
Harrisburg, Pennsylvania 17110

George Thomas, DO, President
American Osteopathic Association
142 East Ontario Street
Chicago, Illinois 60611-2864

Hugh E. Palmer D.O., President
Pennsylvania Osteopathic Medical Association
1330 Eisenhower Boulevard
Harrisburg, Pennsylvania 17111-22395

Title 67. Transportation

Part I. Department of Transportation

Subpart A. Vehicle Code Provisions

Article IV. Licensing

Chapter 71. School Bus Drivers

Notice of Final Rulemaking

Preamble

Notice is hereby given that the Department of Transportation, pursuant to the authority contained in Section 1509 of the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, *as amended* (75 Pa.C.S. §1509), hereby amends Chapter 71 of the Department of Transportation Regulations, Title 67, by amending §§ 71.2 and 71.3, as set forth in Annex A to this Notice.

Purpose of Chapter

The purpose of Chapter 71 is to define more fully the requirements of 75 Pa.C.S. § 1509 by listing minimum medical requirements for school bus drivers.

Purpose of the Proposed Amendments

The purpose of these amendments to Chapter 71 is to allow chiropractors to administer the physical examination required for school bus drivers. Pennsylvania law requires a school bus driver to have a physical examination every year. According to Department regulations the only health care providers who can perform that physical are licensed physicians, certified registered nurse practitioners or physician's assistants. The Pennsylvania Chiropractic Association has requested chiropractors also be allowed to conduct physicals as part of the process of obtaining a driver's license.

Chiropractors are currently considered by health insurance companies to be portal of care practitioners. This means they are regarded as primary care physicians, permitted to furnish necessary patient care for health maintenance. They are also allowed, by federal regulation, to conduct the medical examinations for commercial drivers required every two years by the Federal Highway Administration under Motor Carrier Safety regulations. Since the exclusion of chiropractors from the Department's list of health care providers is inconsistent with current health care practices and federal regulations, chiropractors should be added to Pa. Code Title 67, Chapter 71 as one of the providers who can give the school bus driver's physical examination.

Summary of Comments and Changes in Final Adopted Regulation

Public comment was received from the Pennsylvania Medical Society (PMS), the Pennsylvania Academy of Family Physicians Foundation (PAFPF), the American Osteopathic Association (AOA), and the Pennsylvania Osteopathic Medical Association (POMA) objecting to the inclusion of Chiropractors as medical professionals authorized to conduct examinations required for the school bus driver endorsement. These organizations argue that Chiropractors are not medically qualified to conduct the basic medical examination required under the Vehicle Code. They argue that Chiropractors lack the training and experience of Physicians and Doctors of Osteopathy to make sophisticated diagnoses.

The objections overstate the sophistication of the basic medical examination required under the Vehicle Code. Moreover, these amendments to the Chapter 75 merely conform the regulation to include the authorization of Chiropractors to conduct the

required examinations which has already been authorized in the 2004 amendments to the Vehicle Code enacted by the General Assembly and signed by the Governor.

The requirements of 75 PA. C.S. § 1509(b) do not set up any separate physical examination for school bus drivers; rather they require that school bus drivers carry proof that they have passed the physical examination required of all drivers under § 1508.1. It is this section (1508.1) that the General Assembly amended to include chiropractors in the list of medical professional authorized to conduct the examination.

The comments of PMS suggest that additional disclaimer language be added to note that there are some symptoms and conditions that may be beyond the training and experience of chiropractors to diagnose. It should be noted that there may also be symptoms or conditions which are beyond the training and experience of physician assistance and nurse practitioners. And although such professional may typically work in some collaboration with physicians, the General Assembly has placed no restriction on those professionals that the required examination must be given in collaboration with a physician. The Department declines to implicitly restrict the authority of chiropractors under § 1508.1 by adopting the PMS suggested disclaimer.

The Independent Regulatory Review Commission (IRRC) commented that the new definition of "Doctor of Chiropractic Medicine" differed from the definition of "chiropractor" in the Vehicle Code. It was recommended that the rulemaking be revised to conform verbatim to the definition of "chiropractor" in the statute or be replaced by a reference to the statutory definition. The recommended change to the reference the statutory definition of "chiropractor" has been made. This change should also resolve the concerns raised by the Chiropractic Fellowship of Pennsylvania that the definition in the

proposed rulemaking unreasonably restricted the authority to conduct the examination to a subset of chiropractors. In response to this concern, the reference to "Doctor of Chiropractic Medicine" in § 71.3 has also been changed to "chiropractor."

In addition, IRRC questioned the continued use of the term "school transportation physician" and suggested that it could be deleted. The Department believes that the authority of school districts to designate a specific medical practitioner to conduct the physical examination of school bus drivers should be retained. To address the concerns raised by IRRC, and to provide further clarification in the regulation, the Department has included a definition of "physician" in the final rulemaking and amended to definition of "school transportation physician" to be "school transportation medical practitioner" and included physicians, chiropractors certified nurse practitioners and physician assistants as the medical professionals who could be so designated by a school district.

The IRRC comments also noted that § 71.3(c) needed to be amended to include chiropractors in the list of practitioners in that section. That change has also been made.

Finally, Rosemary Chiavetta, Esquire, on behalf of the Pennsylvania Chiropractic Association, submitted comments supporting the rulemaking.

Persons and Entities Affected

These regulations affect all licensed school bus drivers or persons interested in becoming a school bus driver and chiropractors.

Fiscal Impact

Implementation of these regulations will not require the expenditure of any additional funds by the Commonwealth or local municipalities. These regulations will not impose any additional costs on the medical community and may reduce costs by

allowing applicants for a learner's permit to get their physical examination from their primary care physician.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 3145, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees for review and comment.

In preparing this final-form rulemaking, the Department has considered all comments received from IRRC and the public; no comments were received from the committees.

Under section 5.1(j.2) of the Regulatory Review Act, on _____, 2007, this final-form regulation was deemed approved by the House and Senate Transportation Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2007 and approved the final-form regulation.

Sunset Provisions

The Department of Transportation will make these regulations effective upon publication in final form following appropriate evaluation of any comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required pursuant to the Vehicle Code (75 Pa. C.S. 1.01, et seq.). The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for technical questions about the proposed amendments to the regulations is Chris A. Miller, Manager, Special Driver Programs, Department of Transportation, Bureau of Driver Licensing, 1101 S. Front Street, 3rd floor, Harrisburg, Pennsylvania 17106, telephone number: (717) 787-6453.

Order

The Department of Transportation orders that:

- (A) The regulations of the Department of Transportation, 67 Pa. Code, are amended by the adoption of amendments to Chapter 71 as set forth in Annex A.
- (B) The Secretary of the Department of Transportation shall submit this Order and Annex A hereto to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.
- (C) The Secretary shall certify this Order and Annex A and deposit the same with the Legislative Reference Bureau, as required by law.
- (D) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

Allen D. Biehler, P.E.
Secretary of Transportation

ANNEX A

Title 67. Transportation

Part I. Department of Transportation

Subpart A. Vehicle Code Provisions

Article IV. Licensing

Chapter 71. School Bus Drivers

§ 71.2. Definitions.

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

* * * * *

CHIROPRACTOR—A PRACTITIONER OF CHIROPRACTIC AS DEFINED IN SECTION 1508.1(B) OF THE VEHICLE CODE, 75 PA. C.S. § 1508.1(B).

~~*Doctor of Chiropractic Medicine*—a person licensed in this Commonwealth who has achieved certification or diplomate status through a program by an approved chiropractic college that has established valid standards acceptable to the State Board of Chiropractic for the achievement of certification or diplomate status and is able to diagnose and treat patients whose health problems are associated with the body's muscular, nervous, and skeletal systems, especially the spine.~~

* * * * *

PHYSICIAN — A LICENSED PHYSICIAN AS DEFINED IN 67 PA. CODE § 83.2 (RELATING TO DEFINITIONS).

* * * * *

School transportation physician ~~physician~~ **MEDICAL PRACTITIONER** — A licensed physician as defined in § 83.2 (relating to definitions), PHYSICIAN ASSISTANT, CERTIFIED REGISTERED NURSE PRACTITIONER OR CHIROPRACTOR appointed or approved by a school board, or by the authorities responsible for operation of a private or parochial school. The same person may be appointed or approved as both school transportation ~~physician~~ **MEDICAL PRACTITIONER** and school ~~physician~~ **MEDICAL PRACTITIONER**.

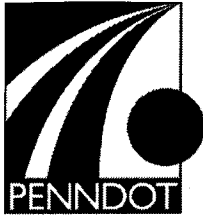
* * * * *

§ 71.3. Physical examination.

(a) *General rule.* A physical examination shall be given by a school transportation **MEDICAL PRACTITIONER**, a physician, a Doctor of Chiropractic Medicine **CHIROPRACTOR**, a CRNP or a physician assistant:

* * * * *

(c) *Physical examination certificate.* The examining school transportation **MEDICAL PRACTITIONER**, physician, **CHIROPRACTOR**, CRNP or physician assistant shall issue a certificate, valid for the ensuing year, to every driver who passes a physical examination.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

OFFICE OF CHIEF COUNSEL
GENERAL LAW DIVISION

POST OFFICE BOX 8212
HARRISBURG, PA 17105-8212
TELEPHONE: (717) 787-5299
FACSIMILE: (717) 772-2741



June 25, 2007

Kim Kaufman
Executive Director
14th Floor Harrisstown 2
333 Market Street
Harrisburg, PA 17101

**Re: Final Rulemaking
Regulation # 18-402, 67 Pa. Code Chapter 71 —
School Bus Drivers**

Dear Mr. Kaufman:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form for amendment to Chapter 71 of Department regulations which the Department of Transportation intends to adopt in accordance with the provisions of Section 204 of the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, 45 P.S. § 1204. **The regulatory package submitted on June 21, 2007 should be considered withdrawn and this package submitted in its place.**

The new regulatory package is identical to the earlier package except for a revision to page 2 of the Annex A.

Copies of these resubmitted materials were also delivered today to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees.

The Department of Transportation will provide you with any assistance you require to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

Stephen F. J. Martin
Regulatory Counsel

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: #18-402
SUBJECT: 67 Pa. Code Chapter 71 — School Bus Drivers
AGENCY: Department of Transportation

INDEPENDENT REGULATORY
REVIEW COMMISSION

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TYPE OF REGULATION

- Proposed Regulation
- X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/25/07	<u>Linda Firrell</u> for Majority Chair	SENATE COMMITTEE ON TRANSPORTATION
6/25/07	<u>Mary E. Hurty</u> for Minority Chair	
6.25.07	<u>Amanda L. Wolfe</u> for Majority Chair	HOUSE COMMITTEE ON TRANSPORTATION
6/25/07	<u>Shelley Weaver</u> for Minority Chair	
6/25/07	<u>Kathy Coops</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		LEGISLATIVE REFERENCE BUREAU

Date: June 25, 2007