

Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

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

(2) I.D. Number (Governor's Office Use)
16A-4921

IRRC Number: 2494

(3) Short Title

Respiratory Care Continuing Education

(4) PA Code Cite

49 Pa. Code, §§ 18.302, 18.309a, and 18.309b

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sabina I. Howell, 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

Policy Statement

(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 rulemaking defines requirements for continuing education of respiratory care practitioners.

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

The rulemaking implements Act 55 of 2004, which directs the State Board of Medicine to establish requirements for obtaining continuing education to be met by individuals holding certification as respiratory care practitioners.

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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.

Section 36.1(f) of the Medical Practice Act of 1985 (63 P. S. § 422.36.1(f)(1)) mandates that the Board promulgate this rulemaking.

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

The rulemaking is put forth in support of the Legislative mandate requiring continuing education for respiratory care practitioners in the Commonwealth.

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

The rulemaking has been mandated by legislative initiative.

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

The rulemaking will enhance the provision of quality care to the residents of the Commonwealth. By setting forth guidelines for obtaining continuing education by licensees, the rulemaking reinforces the need for practitioners in the respiratory care community to be knowledgeable about the most recent innovations and treatment methodologies.

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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.)

There are no perceived people or groups of people who would be adversely affected by this rulemaking.

(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.)

All respiratory care practitioners, except those exempted by the rulemaking (first time applicants), will be required to comply with the rulemaking. Currently there are approximately 5,900 respiratory care practitioners certified by the State Board of Medicine in the Commonwealth.

(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.

In compliance with Executive Order 1996-1, in drafting and promulgating this rulemaking, the Board solicited input and suggestions from the regulated community and other parties who identified themselves as interested in the Board's regulatory agenda. The Board revised its proposed rulemaking as a result of comments received.

(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.

It is difficult to estimate the cost to the regulated community. Much will depend upon where the respiratory care practitioners choose to obtain their continuing medical education. There are many programs that are offered at little or no cost through hospitals, local medical societies, etc. Many, if not most, licensees already obtain some continuing education. Respiratory care practitioners will be required to maintain records of compliance.

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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.

No costs or savings to local governments are generated by this rulemaking.

(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.

The costs associated with implementing this rulemaking are hard to quantify. There will be some costs incurred for auditing, verifying and prosecuting cases relating to completion of continuing medical education credits. However, the overhead cost involved in these activities will be minimal, as audit and verification for licensure requirements already takes place.

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

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

Costs associated with respiratory care practitioner compliance will vary based upon charges assessed by continuing education providers. Continuing education could in many instances be provided at no cost by health care facilities.

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

Program	FY -3 2001-2002	FY -2 2002-2003	FY -1 2003-2004	Current FY 2004-2005
State Board of Medicine	\$3,241,114.50	\$3,861,200.20	\$4,208,232.09	\$8,774,000.00

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

There should be no adverse effects and costs associated with compliance with the rulemaking. The benefits of the regulation are described in sections 11 & 13, above. Further, this rulemaking has been legislatively mandated.

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

The implementation of regulations has been legislatively mandated to reflect the on-going need for continuing education in the respiratory care practitioner community.

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

The rulemaking reflects the mandate of the legislature, and as such no other regulatory schemes were found to be viable.

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(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 federal standards in this area.

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

New York, Delaware, West Virginia and Virginia all require 10 hours of continuing education per year, which is comparable to the amount required by these regulations. Maryland requires 8 hours of continuing education per year. Ohio requires 12 hours of continuing education per year. New Jersey does not require continuing education.

The rulemaking will not put Pennsylvania at a competitive disadvantage.

(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 public hearings are scheduled.

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(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.

Yes. Respiratory care practitioners will be required to maintain evidence of compliance with the regulations.

(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.

The Board has not identified any affected groups or persons that need to be accommodated in any way.

(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 rulemaking will become effective upon final-form publication.

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

The Board continuously monitors the effectiveness of its regulations.

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Agencies.

BY _____
(DEPUTY ATTORNEY GENERAL)

State Board of Medicine
(AGENCY)

BY: 
ANDREW C. CLARK

DATE OF APPROVAL _____

DOCUMENT/FISCAL NOTE NO. 16A-4921

DATE OF ADOPTION: _____

DATE OF APPROVAL
MAY 05 2006

BY: 

(Executive Deputy General
Counsel)

TITLE: Chairperson
(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.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF MEDICINE
49 PA. CODE, CHAPTER 18
RESPIRATORY CARE CONTINUING EDUCATION

The State Board of Medicine (Board) hereby amends § 18.302 and 18.309 (relating to definitions; and renewal of certification) and adds §§18.309a and 18.309b (relating to requirement of continuing education; and approved educational programs) to read as set forth in Annex A.

A. Effective Date

The amendments will be effective upon publication as final-form rulemaking in the Pennsylvania Bulletin.

B. Statutory Authority

The act of July 2, 2004 (No. 55, P.L. 484)(Act 55) amended the Medical Practice Act of 1985 (act) (63 P.S. §422.1- 422.51a) to provide for the continuing education of respiratory care practitioners. Section 36(f)(1) of the act (63 P.S. §422.36(f)(1)) directs the Board to promulgate regulations as necessary to establish the requirements for continuing education for respiratory care practitioners.

C. Background and Purpose

This rulemaking implements Act 55 by establishing requirements for continuing education to be met by individuals holding certifications as respiratory care practitioners as a condition of certificate renewal.

D. Summary of comments and Responses to Proposed Rulemaking

Proposed rulemaking was published at 35 Pa. B. 5520 on October 8, 2005. The Board entertained public comment for a period of 30 days during which time the Board received comments from the Pennsylvania Society for Respiratory Care (PSRC), Soldiers + Sailors Memorial Hospital and two individual respiratory care practitioners. Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. The Board also had input from one of its members who is a respiratory care practitioner. The following is a summary of the comments and the Board's response.

The PSRC was supportive of the rulemaking. The PSRC suggested that the regulations allow for a combination of traditional and nontraditional continuing education methods. Traditional education is considered "live" interaction with a presenter either in a classroom setting, a real-time web-cast or a teleconference. Nontraditional education

would include pre-recorded presentations, internet-based presentations or journal review programs. The PSRC suggested that 50% of the continuing education hours be acquired through traditional education and 50% be acquired by nontraditional education. A further suggestion was that of the 20 continuing education hours required, 1 hour be required in the category of ethics and 1 hour be required in patient safety.

Soldiers + Sailors Memorial Hospital suggested that certificateholders be permitted no more than 8 to 10 hours in a nontraditional setting during the biennial renewal period. It was further suggested that the amount of hours obtained by taking advanced life support courses be limited to 12 credits. One of the respiratory care practitioners suggested the 50/50 split in traditional and nontraditional coursework. The other respiratory care practitioner offered no recommendations.

The HPLC and the IRRC both questioned the ability of certificateholders to meet the 20-hour requirement prior to the biennial renewal of December 31, 2006, in view of the time remaining. The HPLC requested information as to the Board's efforts to inform its certificateholders about the continuing education requirement and also suggested a prorating of the required hours for the current biennium. The IRRC suggested that the requirements be effective with the biennial renewal period commencing January 1, 2007. The Board acknowledges the concerns of the HPLC and the IRRC, however responds that all certificate holders have had a significant period of time to obtain the continuing education hours. In anticipation of these concerns and in recognition of the length of the regulatory review process, the Board sent a direct mailing to all respiratory care practitioners certified by the Board at the beginning of June 2005. In addition, the new requirements have been posted on the Board's web site since September 2004. Therefore, all respiratory care practitioners certified by the Board will have had personal notification in excess of 18 months to obtain the required hours. The Board believes 18 months is more than sufficient time to obtain 20 continuing education hours. The IRRC further suggested that the Board permit a portion of the credit hours to be obtained by nontraditional methods.

The Board has no objection to the 50/50 split in the manner of obtaining the continuing education credits. Recognizing the benefits of modern technology as a tool in the learning process, and acknowledging that individuals will learn and gain information in the manner which is most useful and relevant to them, the Board has determined to accept continuing education obtained through web-casting, teleconferencing and other nontraditional methods, so long as the provider has mechanisms in place to verify participation. The Board concurs with the PSRC, which appeared before the Board twice subsequent to the public comment period, that no more than 50% of the continuing education hours be obtained in a nontraditional manner. In reaching this conclusion, the Board has also taken into consideration that the nontraditional method of education is less expensive, which is a concern for certificateholders. Further, in consideration of the comment of the PSRC, and consistent with the continuing education requirements for other Board licensees, the Board has determined that 1 continuing education hour should be required in patient safety, and 1 continuing education hour should be required in

medical ethics. The Board has been assured by the PSRC that these types of continuing education credit hours are available.

The HPLC and the IRRC suggested that the word “next” be replaced with the word “current” in § 18.309(c) (relating to renewal of certification). The HPLC and the IRRC further suggested that the phrase “all or a portion of” be inserted in the language of §18.309a(3) (relating to requirement of continuing education). The HPLC and the IRRC also suggested that the language in section 36.1(f)(4) of the act pertaining to waiver be added to the language in § 18.309a(3). The HPLC recommended that the language in § 18.309(a)(2) be replaced with the language in section 36.1(f)(3) of the act. The HPLC and the IRRC suggested that the term “licensee” in § 18.309a(4) be replaced with the word “certificateholder” to track the language of the act. The Board has no objection to these language modifications since they do not alter the intent of the provisions, and has, therefore, incorporated these revisions.

The HPLC sought clarification from the Board on what the phrase “advanced coursework in respiratory care” means in § 18.309b(b) (relating to approved educational courses). The Board has added language in that section to address the HPLC’s concerns. The HPLC also requested a punctuation change, which had previously been made by the Legislative Reference Bureau prior to publication of this rulemaking in the Pennsylvania Bulletin.

The HPLC requested assurances that the final rulemaking will be in place by December 31, 2006. The Board is committed to the expeditious completion of this rulemaking, and has acted accordingly. The Board does not anticipate any untoward delay by reviewing agencies or reviewing bodies under the Regulatory Review Act.

E. Description of Amendments

Section 18.309(c) (relating to renewal of certification) is amended to delete the word “next” and substitute the word “current”. Section 18.309a (relating to requirement of continuing education) is expanded by addition of a new subsection 18.309a(a)(2). Subsection 18.309a(a)(2) requires that at least 50% of the required credit hours be taken in lecture or clinical presentations and that no more than 50% of the required credit hours may be taken through individual study. Subsection 18.309a(a)(4) requires that 1 continuing education hour be completed in patient safety, and 1 continuing education hour be completed in medical ethics commencing with the biennial period ending December 31, 2008. The language in § 18.309a(b), which was formerly numbered § 18.309a(a)(2), is deleted and replaced by the language found in section 36.1(f)(3) of the act. The phrase “all or a portion of” is inserted to amend the language of §18.309a(c), which was formerly numbered section 18.309a(3). In addition, this subsection is further amended to add the language found in section 36.1(f)(4) of the act pertaining to waiver.

As noted by the HPLC and the IRRC, subsection 18.309a(4) of the proposed rulemaking erroneously referred to respiratory care practitioners as “licensee” instead of “certificateholder”. Final rulemaking corrects this error in the renumbered 18.309a(d).

As suggested by the HPLC, the Board clarifies what is intended to constitute advanced course work in § 18.309b(b) (relating to approved educational courses).

F. Fiscal Impact and Paperwork Requirements

The amendments would have no adverse fiscal impact or additional paperwork requirements imposed on the Commonwealth, its political subdivisions or the private sector.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of the notice of proposed rulemaking, published on October 8, 2005, at 35 Pa.B. 5520, to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC, were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

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

I. Contact Person

Further information may be obtained by contacting Sabina I. Howell, Counsel, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649 or by e-mail at showell@state.pa.us.

J. Findings

The State Board of Medicine finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 35 Pa.B. 5520.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 18, are amended to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Charles D. Hummer, Jr., M.D.
Chairperson

Annex A

**TITLE 49. PROFESSIONAL AND VOCATIONAL
STANDARDS**

PART I. DEPARTMENT OF STATE

**Subpart A. PROFESSIONAL AND OCCUPATIONAL
AFFAIRS**

CHAPTER 18. STATE BOARD OF MEDICINE

Subchapter F. RESPIRATORY CARE PRACTITIONERS

§ 18.302. Definitions.

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

AARC--American Association for Respiratory Care, an organization which provides and approves continuing professional development programs.

AMA--American Medical Association, an organization which provides and approves continuing professional development programs.

AOA--American Osteopathic Association, an organization which provides and approves continuing professional development programs.

* * * * *

CSRT--Canadian Society of Respiratory Therapists, an organization which provides and approves continuing professional development programs.

CONTINUING EDUCATION HOUR – 50 MINUTES OF
CONTINUING EDUCATION.

* * * * *

§ 18.309. Renewal of certification.

* * * * *

(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner prescribed by the Board, complete the continuing education requirement as set forth in § 18.309a (relating to requirement of continuing education) and pay the required fee prior to the expiration of the ~~next~~ CURRENT biennium.

* * * * *

§ 18.309a. Requirement of continuing education.

(a) The following continuing education requirements shall be completed each biennial cycle, commencing with the biennial period ending December 31, 2006:

- (1) An applicant for biennial renewal or reactivation of certification is required to complete, during the 2 years preceding the application

for renewal or reactivation, a minimum of 20 hours of continuing education as set forth in section 36.1(f)(2) of the act (63 P. S. § 422.36.1(f)).

- (2) AT LEAST 10 CONTINUING EDUCATION HOURS MUST BE OBTAINED THROUGH CLASSROOM LECTURE, CLINICAL PRESENTATION, REAL-TIME WEB-CAST OR OTHER LIVE SESSIONS WHERE A PRESENTER IS INVOLVED.
- (3) NO MORE THAN 10 CONTINUING EDUCATION HOURS MAY BE OBTAINED THROUGH INTERNET PRESENTATIONS, JOURNAL REVIEW PROGRAMS, PRE-RECORDED VIDEO PRESENTATIONS OR SIMILAR MEANS OF NONTRADITIONAL EDUCATION. TO QUALIFY, THE PROVIDER MUST MAKE AVAILABLE DOCUMENTED VERIFICATION OF COMPLETION OF THE COURSE OR PROGRAM.
- (4) COMMENCING WITH THE BIENNIAL PERIOD ENDING DECEMBER 31, 2008, 1 CONTINUING EDUCATION HOUR MUST BE COMPLETED IN MEDICAL ETHICS, AND 1 CONTINUING EDUCATION HOUR MUST BE COMPLETED IN PATIENT SAFETY.
- (2)(b) ~~A certificateholder is exempt from the continuing education requirement for the first biennial renewal period subsequent to initial certification.~~ AN INDIVIDUAL APPLYING FOR THE FIRST

TIME FOR CERTIFICATION IS EXEMPT FROM THE CONTINUING EDUCATION REQUIREMENT FOR THE BIENNIAL RENEWAL PERIOD FOLLOWING INITIAL CERTIFICATION.

(3)(c) The Board may waive ALL OR A PORTION OF the requirements of continuing education in cases of serious illness, or other demonstrated hardship or military service. It shall be the duty of each certificate-holder who seeks a waiver to notify the Board in writing and request the waiver prior to the end of the renewal period. THE REQUEST SHALL BE MADE IN WRITING, WITH APPROPRIATE DOCUMENTATION, AND SHALL INCLUDE A DESCRIPTION OF CIRCUMSTANCES SUFFICIENT TO SHOW WHY THE CERTIFICATEHOLDER IS UNABLE TO COMPLY WITH THE CONTINUING EDUCATION REQUIREMENT. The Board will grant, deny or grant in part the request for waiver and will send the certificateholder written notification of its approval or denial in whole or in part of the request. A certificateholder who requests a waiver may not practice as a respiratory care practitioner after the expiration of the certificateholder's current certificate until the Board grants the waiver request.

(4)(d) A licensee CERTIFICATEHOLDER shall maintain the information and documentation supporting completion of the hours

of continuing education required, or the waiver granted, for at least 2
years from the commencement of the biennial renewal period to
which the continuing education or waiver applies AND SHALL
PROVIDE SUCH INFORMATION AND DOCUMENTATION TO
RESPRENTATIVES OF THE BOARD UPON REQUEST.

§ 18.309b. Approved educational courses.

(a) The Board approves respiratory care continuing education programs
designated for professional development credits by the AARC, the
AMA, the AOA and the CSRT. The courses, locations and
instructors provided by these organizations for continuing education
in respiratory care are deemed approved by the Board. Qualifying
AMA continuing education programs shall be in AMA PRA
Category I as defined in § 16.1 (relating to definitions) and
qualifying AOA continuing education programs shall be in Category
1A and 1B.

(b) Advanced course work in respiratory care successfully completed at
a degree-granting institution of higher education approved by the
United States Department of Education which offers academic
credits is also approved for continuing education credit by the Board.
ADVANCED COURSE WORK IS ANY COURSE WORK
BEYOND THE ACADEMIC REQUIREMENTS NECESSARY
FOR CERTIFICATION AS A RESPIRATORY CARE

PRACTITIONER. Proof of completion of the academic credits shall
be submitted to the Board for determination of number of
CONTINUING EDUCATION HOURS credits completed.

(c) The Board will not accept courses of study which do not relate to the
clinical aspects of respiratory care, such as studies in office
management and financial procedures.

PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Commencement of Mercury Rulemaking Public Involvement Plan

On August 9, 2004, Citizens for Pennsylvania's Future (PennFuture) filed a petition with the Environmental Quality Board (Board) on behalf of various organizations "requesting action to reduce the high emissions of mercury to the air from Pennsylvania's electric utilities." The petitioners requested a mercury control level of at least 90% or 3.00 mg/MW-hr per electric generating unit with compliance by December 15, 2007.

The Department of Environmental Protection (Department) on August 15, 2005, recommended to the Board that a PA-specific mercury regulation be developed with significant public involvement. The rulemaking process would: (1) examine mercury emission reduction strategies for electric generating units; (2) encourage the burning of cleaner coal of this Commonwealth and discourage fuel switching; and (3) consider capacity and reliability concerns for delivery of power over the grid. By a 16-3 vote, the Board approved the Department's recommendation to develop a "State-specific" mercury emission control regulation. The motion was amended as follows: "During the development of its regulatory proposal, the Department will confer with various stakeholders including, but not limited to, the Pennsylvania Chamber of Business and Industry, Pennsylvania Chemical Industry Council, Associated Petroleum Industries of Pennsylvania, Pennsylvania Manufacturers Association, Industrial Energy Users of Pennsylvania, Electric Power Generation Association, Pennsylvania Coal Association, United Mine Workers of America, Air Quality Technical Advisory Committee, Citizens Advisory Council, the petitioners and other representatives of the potentially regulated community."

Purpose of Public Involvement:

The Mercury Rulemaking Public Involvement process is being initiated to consult with a diverse group of public and private sector individuals, including representatives of the petitioners, industry and trade associations. The primary objectives of the public involvement process are to:

- 1) Discuss key information relevant to a "State-specific" mercury regulation.
- 2) Obtain recommendations on the technical aspects of the proposed rulemaking, including control levels, testing, monitoring, recordkeeping and reporting and compliance schedules.

It is important to discuss the available background information on mercury emissions, deposition and control technology as well as the costs and benefits of the regulation. To this end, the Department will hold a series of meetings with the Mercury Rule Workgroup (Workgroup) including representatives of the Air Quality Technical Advisory Committee (AQTAC) and the Citizens Advisory Council (CAC) to discuss information and issues relevant to the development of Pennsylvania's mercury rulemaking. The first part of the Workgroup process will involve discussion of available background information on

mercury emissions, deposition and control technology as well as the costs and benefits of the regulation. The second part of this process will address issues related to the development of the proposed mercury rulemaking.

Public Involvement Meetings

Beginning in October 2005, the AQTAC and the CAC will jointly host several Workgroup meetings, on behalf of the Department, to facilitate discussions and stakeholder perspectives concerning the mercury rulemaking process. The meetings will provide a forum for the discussion of the Workgroup's perspectives and other topics of interest including mercury emissions, transport and deposition, global/local impacts, hot spots, speciation, control equipment, electric system reliability, costs and benefits, compliance timeframes and any other topics germane to the mercury rulemaking process. The Department's Air Quality staff will attend the Workgroup meetings to review available data and issues of concern. In addition, the staff will seek the input of the Workgroup during the development of the draft regulation. An independent record of the meetings will be made to allow the Department staff to focus on the discussion and regulation development.

The first Workgroup meeting will be held on October 14, 2005, from 9 a.m. to 3 p.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg. Additional meetings will be scheduled at the October 14 meeting. Materials related to the mercury petition and rulemaking process, including a list of Workgroup participants and notices of Workgroup meetings, will be posted on the Department's mercury webpage at www.dep.state.pa.us, (Keyword: "mercury rule") for availability to the general public. Meeting notices will also be published in the Department's *Daily Update*, which can be accessed at www.depesf.state.pa.us/news/site/default.asp.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-1851. Filed for public inspection October 7, 2005, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 18]

Respiratory Care Continuing Education

The State Board of Medicine (Board) proposes to amend §§ 18.302 and 18.309 (relating to definitions; and renewal of certification) and add §§ 18.309a and 18.309b (relating to requirement of continuing education; and approved educational programs) to read as set forth in Annex A.

A. Effective Date

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*. The completion of continuing education hours will be required to renew a certification as a respiratory care practitioner beginning with the January 1, 2007, biennial renewal.

B. Statutory Authority

The proposed rulemaking implements the act of July 2, 2004 (No. 55, P. L. 484) (Act 55), which directs the Board

to adopt, promulgate and enforce regulations that establish requirements for continuing education to be met by individuals holding certification as respiratory care practitioners in this Commonwealth.

Disciplinary procedures for failure to comply would be addressed by way of amendments to § 16.61 (relating to unprofessional and immoral conduct) which will be proposed in the future as a part of the regulatory package for the implementation of the act of December 10, 2001 (No. 92, P. L. 859), which authorizes the Board to promulgate regulations that define the certification, circumstances and protocol under which a certified athletic trainer may perform athletic training services and define the supervision and personal direction required by the standards of acceptable medical practice embraced by the medical doctor community in this Commonwealth.

C. Background and Purpose

Act 55, which became effective August 31, 2004, amended the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.1—422.51a) by adding section 36.1(f) of the act (63 P. S. § 436.1(f)) to provide for the continuing education of respiratory care practitioners. The Board now proposes these amendments to establish requirements for continuing education for respiratory care practitioners.

D. Description of Proposed Rulemaking

Section 18.302 would be amended to set forth acronyms used in the proposed amendments for Nationally recognized organizations that provide and certify courses and programs in respiratory therapy.

Section 18.309 would be amended to reflect the requirement for continuing education in § 18.309a.

Section 18.309a would set forth the requirement of continuing education. This section requires attendance at and completion of 20 credit hours each biennial cycle for renewal or reactivation of licensure. There is also provision for exemptions and waivers. Section 18.309b would designate Nationally recognized providers of respiratory care training as the approved providers for and certifiers of the continuing education credits.

E. Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no quantifiable adverse fiscal impact on the Commonwealth or its political subdivisions.

F. Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act, (71 P. S. § 745.5(a)), on September 26, 2005, the Board 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 Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the

General Assembly, and the Governor of comments, recommendations or objections raised.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Sabina I. Howell, Board Counsel, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed rulemaking in the *Pennsylvania Bulletin*.

CHARLES D. HUMMER, Jr., M.D.,
Chairperson

Fiscal Note: 16A-4921. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 18. STATE BOARD OF MEDICINE

Subchapter F. RESPIRATORY CARE PRACTITIONERS

§ 18.302. Definitions.

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

AARC—American Association for Respiratory Care, an organization which provides and approves continuing professional development programs.

AMA—American Medical Association, an organization which provides and approves continuing professional development programs.

AOA—American Osteopathic Association, an organization which provides and approves continuing professional development programs.

* * * * *

CSRT—Canadian Society of Respiratory Therapists, an organization which provides and approves continuing professional development programs.

* * * * *

§ 18.309. Renewal of certification.

* * * * *

(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner prescribed by the Board, complete the continuing education requirement as set forth in § 18.309a (relating to requirement of continuing education) and pay the required fee prior to the expiration of the next biennium.

* * * * *

§ 18.309a. Requirement of continuing education.

The following continuing education requirements shall be completed each biennial cycle, commencing with the biennial period ending December 31, 2005:

(1) An applicant for biennial renewal or reactivation of certification is required to complete, during the 2 years preceding the application for renewal or reactivation, a minimum of 20 hours of continuing education as set forth in section 36.1(f)(2) of the act (63 P. S. § 422.36.1(f)).

(2) A certificateholder is exempt from the continuing education requirement for the first biennial renewal period subsequent to initial certification.

(3) The Board may waive the requirements of continuing education in cases of serious illness, or other demonstrated hardship or military service. It shall be the duty of each certificateholder who seeks a waiver to notify the Board in writing and request the waiver prior to the end of the renewal period. The Board will grant, deny or grant in part the request for waiver and will send the certificateholder written notification of its approval or denial in whole or in part of the request. A certificateholder who requests a waiver may not practice as a respiratory care practitioner after the expiration of the certificateholder's current certificate until the Board grants the waiver request.

(4) A licensee shall maintain the information and documentation supporting completion of the hours of continuing education required, or the waiver granted, for at least 2 years from the commencement of the biennial renewal period to which the continuing education or waiver applies.

§ 18.309b. Approved educational courses.

(a) The Board approves respiratory care continuing education programs designated for professional development credits by the AARC, the AMA, the AOA and the CSRT. The courses, locations and instructors provided by these organizations for continuing education in respiratory care are deemed approved by the Board. Qualifying AMA continuing education programs shall be in AMA PRA Category I as defined in § 16.1 (relating to definitions) and qualifying AOA continuing education programs shall be in Category 1A and 1B.

(b) Advanced course work in respiratory care successfully completed at a degree-granting institution of higher education approved by the United States Department of Education which offers academic credits is also approved for continuing education credit by the Board. Proof of completion of the academic credits shall be submitted to the Board for determination of number of credits completed.

(c) The Board will not accept courses of study which do not relate to the clinical aspects of respiratory care, such as studies in office management and financial procedures.

[Pa.B. Doc. No. 05-1852. Filed for public inspection October 7, 2005, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Fees for Approval of Nursing Education Programs

The State Board of Nursing (Board) proposes to amend §§ 21.5, 21.147 and 21.253 (relating to fees) to read as set forth in Annex A. The proposed rulemaking will update the fees charged for the approval of nursing education programs.

Effective Date

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

PENNSYLVANIA BULLETIN, VOL. 35, NO. 41, OCTOBER 8, 2005

Statutory Authority

The proposed rulemaking is authorized under section 11.2 of the Professional Nursing Law (RN act) (63 P.S. § 221.2) and section 17.5 of the Practical Nurse Law (PN act) (63 P.S. § 667.5).

Background and Need for the Proposed Rulemaking

The Board provides various services to licensees, applicants and nursing schools for which fees are charged. Section 6.1 of the RN act (63 P.S. § 216.1), regarding approval of professional nursing education programs, section 9 of the PN act (63 P.S. § 659), regarding approval of practical nursing education programs, and section 8.1 of the RN act (63 P.S. § 218.1), regarding qualifications for certified registered nurse practitioners (CRNPs), approved programs of education, require the Board to approve nursing education programs. Under this statutory authority, the Board has promulgated regulations detailing the requirements of approved programs of nursing education in §§ 21.81–21.126 and 21.161–21.234. The Board anticipates the promulgation of a final-form rulemaking regarding the approval of CRNP education programs later this year. See 34 Pa.B. 4890 (September 4, 2004).

The Board reviews nursing educational programs with the assistance of its nursing education advisors, who are individuals with a minimum of a master's degree in nursing in accordance with section 2.1(i) of the RN act (63 P.S. § 212.1(i)). The procedure for reviewing an application for approval of a new nursing education program requires that the Board staff conduct an in-depth review and analysis of the application, including review of the budget, curriculum, faculty and clinical experiences. In addition, Board staff conducts a site survey and reviews the physical facilities, such as classroom space, library holdings and nursing equipment. The amended fees associated with this approval process are directly tied to the administrative cost of reviewing and analyzing the application and surveying the program.

In 1991, the Board established fees for the approval of professional and practical nursing education programs at 21 Pa.B. 5521 (November 30, 1991). The fees were amended in 1993, to their current levels of \$475 for professional and practical nursing education programs. See 23 Pa.B. 5634 (November 27, 1993). The Board charges CRNP programs seeking approval the same fee.

Since 1993, the time expended by the Board staff to review each program has increased dramatically. Many of the proposals from the past 2 years to develop nursing education programs at the professional and practical nurse level have come from individuals with little or no background in nursing education. This is due in part to the recent need for new nursing education programs, which is directly related to the need to educate more nurses because of the nursing shortage. The inexperience of the new program developers has led to greatly increased involvement of the nursing education advisors in planning curriculum and clinical experiences, and overseeing the creation of facilities for nursing education programs. It has become common for the Board staff to review and offer advice on multiple draft proposals before the proposals are ready to be presented to the Board.

The Board sets fees, other than biennial renewal fees that support the general operations of the Board, based on the actual cost of providing services. The Office of Revenue conducted a study of the average services provided to nursing education programs seeking Board approval and determined that the fee for approval of

Regulation 16A-4921 – Respiratory Care CE

IRRC – Mike Stevens

Question on no fees associated with this, as directed in (f)(1) of the Act. *Advised no fees anticipated*

Question on discipline language. *Advised him of AT capture of this.*

Annex section 18.309(a) effective date feasibility. Osteo gave more time. *Advised him of posting on web-site and direct mailing.*

Hardship waiver requests in 18.309(a)(3). Similar to Opto reg 23.82(c)

HPLC – Karen Dalton

Question on CSRT.

Ability to complete the CEs by end of 2006.

Tracking language of statute in 18.309(a). Language is confusing as to two periods (of time) or one.

Certificate holder, not licensee in 18.309(a)(4)

List of Commentators for 16A-4921

**The Pennsylvania Society for Respiratory Care
John Conrad, President
238 Gotschal Road
Danville, PA 17821**

**Soldiers and Sailors Memorial Hospital
32-36 Central Avenue
Wellsboro, PA 16901**

**Michelle S. Combs
P.O. Box 214
Knoxville, PA 16928**

**Alice Horney
456 North 5th Street
Lebanon, PA 17046**



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF MEDICINE

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-1400

May 25, 2006

The Honorable Alvin C. Bush, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Medicine
16A-4921:Respiratory Care Continuing Education

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Medicine pertaining to Respiratory Care Continuing Education.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

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

CDH/SIH:klh

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
Sabina I. Howell, Counsel
State Board of Medicine
State Board of Medicine

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 16A-4921
SUBJECT: State Board of Medicine: Respiratory Care Continuing Education
AGENCY: DEPARTMENT OF STATE

2006 MAY 23 AM 11:56
INDEPENDENT REGULATORY
REVIEW COMMISSION

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

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/25/06	<i>Samuel J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
5-25-06	<i>Jim Chapman</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
5/25/06	<i>Kenneth A. Coops</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

May 8, 2006