

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independence & Justice for All

SECTION I: PROFILE

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs, State Board of Physical Therapy

(2) Agency Number:

Identification Number:

16A-6513

IRRC Number: **2786**

(3) Short Title:

Continuing education providers

(4) PA Code Cite:

49 Pa. Code § 40.63

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: **Thomas A. Blackburn, Regulatory unit counsel, Department of State;**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; tblackburn@state.pa.us

Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; jmckeever@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5: **State Board of Physical Therapy**

(717)783-7134; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-7769; st-physical@state.pa.us

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

☒ Proposed Regulation

☐ Final Regulation

☐ Final Omitted Regulation

☐ Emergency Certification Regulation;

☐ Certification by the Governor

☐ Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This proposed rulemaking would amend existing § 40.63(d) of the Board's regulations to require that requests for approval of continuing education courses be submitted at least 60 days in advance (or request waiver with justification for applying later) and to allow for implicit approval for multiple offerings of the same course within one year. The proposed rulemaking would also add § 40.63(h) to provide for preapproved sponsors of continuing education.

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: 30 days after publ.
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: N/A
- D. The expected effective date of the final-form regulation: N/A
- E. The date by which compliance with the final-form regulation will be required: N/A
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

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

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the third Thursday of each odd-numbered month. More information can be found on the Board's website (www.dos.state.pa.us/physther).

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

This rulemaking is authorized by sections 3(a) and 9(c) of the Physical Therapy Practice Act (63 P.S. §§ 1303(a) and 1309(c)).

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(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The proposed rulemaking is not mandated by any federal or state law or court order or federal regulation.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Board's current regulation at § 40.63(d) (relating to approved sponsors; acceptable courses and programs) sets forth standards for approval of courses of continuing education. However, although it takes time for the Board to review and approve or deny the application, that section does not set a time limit in which to apply for approval. The current regulation also appears to require an application for each of multiple offerings of a given course of continuing education. Additionally, the current regulations require approval for every course of continuing education, even though some sponsors have demonstrated that they clearly meet the requirements for approved courses and programs.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

This proposed rulemaking is not based upon any scientific data, studies, or references.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The Board does not foresee any groups being adversely affected by the proposed rulemaking.

(16) 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 physical therapists with direct access certification and providers of continuing education will be required to comply with the proposed rulemaking.

SECTION III: COST AND IMPACT ANALYSIS

Regulatory Analysis Form

(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. Explain how the dollar estimates were derived.

There are no costs or savings to the regulated community associated with compliance with the proposed rulemaking.

(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. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the proposed 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. Explain how the dollar estimates were derived.

There are no costs or savings to state government associated with compliance with the proposed rulemaking.

(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	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	NA	NA	NA	NA	NA	NA
REVENUE LOSSES:						
Regulated Community						

Regulatory Analysis Form

Local Government						
State Government						
Total Revenue Losses	NA	NA	NA	NA	NA	NA

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

Program	FY -3 (FY 05-06)	FY -2 (FY 06-07)	FY -1 (FY 07-08)	Current FY (FY 08-09)
Pa. State Board of Physical Therapy	\$310,592	\$345,693	\$350,373	\$451,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No adverse effects or costs have been associated with compliance with the proposed rulemaking. Therefore, the above-identified benefits would outweigh any costs.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Board did not solicit input from or provide an exposure draft of this proposed rulemaking to interested parties. However, the proposed rulemaking was extensively discussed at public meetings of the Board, which are routinely attended by members of the regulated community and their professional associations.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

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 regulations.

The proposed rulemaking is not more stringent and does not overlap or conflict with any federal requirements.

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Licensed physical therapists in Delaware must complete continuing education; there are no minimum advance approval times, and courses approved elsewhere are deemed approved in Delaware. Physical therapists in Maryland must complete continuing education, and course providers must apply for approval at least six weeks in advance, and there are no preapproved providers. Physical therapists in New Jersey must complete continuing education, course providers must apply for approval at least 45 days in advance, and graduate and doctoral courses in approved programs are preapproved for continuing education credit. Physical therapists in Ohio must complete continuing education, and providers must apply for approval, though no specific time limitations are set. Physical therapists in West Virginia must complete continuing education, and providers must apply for approval, though no specific time limitations are set. New York does not require physical therapists to complete continuing education.

The proposed rulemaking would not put Pennsylvania at a competitive disadvantage.

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

This proposed regulation would not affect other regulations of the Board or other state agencies.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This proposed rulemaking would not require any additional recordkeeping or other paperwork. To the contrary, the proposed rulemaking would eliminate the need for seeking advance approval by the Board for continuing education courses offered by certain providers.

(28) 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 determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

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

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
COMMISSION

DO NOT WRITE IN THIS SPACE

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

BY: Angela M. Elliott
(DEPUTY ATTORNEY GENERAL)

MAY 29 2009

DATE OF APPROVAL

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

State Board of Physical Therapy

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-6513

DATE OF ADOPTION:

BY: James L. Clahane, PT

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: Andrew C. Clark

MAY 5 2009

DATE OF APPROVAL

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

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

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

PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PHYSICAL THERAPY

49 Pa. Code § 40.63
CONTINUING EDUCATION PROVIDERS

The State Board of Physical Therapy (Board) proposes to amend § 40.63 (relating to continuing education), to read as set forth in Annex A.

Effective date

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

Statutory Authority

The amendments are authorized under sections 3(a) and 9(c) of the Physical Therapy Practice Act (act) (63 P.S. §§ 1303(a) and 1309(c)).

Background and Need for the Amendment

Section 9(a) of the act (63 P.S. § 1309(a)) generally prohibits a physical therapist from treating human ailments by physical therapy except upon referral by a physician. However, under section 9(b) of the act (63 P.S. § 1309(b)), a physical therapist who meets certain qualifications may receive from the Board a certificate of authority to practice physical therapy without the required referral (often known as direct access). Under section 9(c)(1) of the act (63 P.S. § 1309(c)(1)), a certificate holder must complete a minimum amount of continuing education in each biennial renewal cycle in order to maintain direct access certification. The Board previously promulgated § 40.63 (relating to continuing education) to set standards of continuing education for a direct access certificate holder.

Under § 40.63(d), a sponsor must apply to the Board and obtain approval for each course or program of continuing education in order for the direct access certificate holder to receive credit in order to satisfy the continuing education requirement. In order to avoid the need to apply for approval and review applications from providers that the Board knows currently meet the standards for approved continuing education courses, the Board proposes to preapprove those sponsors without requiring an application or specific review by the Board. Additionally, § 40.63(d) does not currently set a time in which the sponsor must apply for approval. The Board proposes to require a continuing education sponsor to apply for approval at least 60 days in advance of the course presentation so that the Board would have adequate time to review the application and to permit a sponsor to request a waiver of that time limitation for good cause shown. Finally, because a given course might be offered multiple times, the Board proposes to explicitly indicate through its regulations that approval of a good is good for multiple offerings of that course throughout the year.

Description of the Proposed Amendments

The proposed rulemaking would first amend § 40.63(d)(1) and (3) to refer to approval status of the continuing education course, not the sponsor as the current regulation incorrectly refers. In order to provide the Board with adequate time in which to review the application, § 40.63(d)(3) would be amended to require that an application for course approval be submitted at least 60 days prior to the date the continuing education course is due to take place. Proposed § 40.63(d)(5) would

be added to provide that a sponsor that is unable to apply at least 60 days in advance may request a waiver setting forth the reasons why the 60-day requirement could not be met. The Board may grant the waiver and review the application, if possible, with less than 60 days. Also, proposed § 40.63(d)(6) would be added to provide that course approval is valid for one year. The sponsor may offer other presentations of that course throughout the year, so long as they are indicated on the application.

Proposed § 40.63(h) (relating to preapproved sponsors) would be added to provide for preapproval of sponsors whom the Board has determined meet the standards for approved courses and programs. Courses that otherwise meet all requirements for required continuing education would be approved when offered by the American Physical Therapy Association and its components, the Federation of State Boards of Physical Therapy (FSBPT), graduate education programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE). It should be noted that the Board is a constituent member of FSBPT and that at § 40.11 the Board requires applicants to be graduates of physical therapy programs accredited by CAPTE. However, CAPTE accredits only entry-level programs - those awarding up through a master's degree. To the extent they otherwise meet all requirements for required continuing education, courses offered by post-entry level doctorate of physical therapy programs in institutions accredited by the regional accrediting organization recognized by the Council of Regional Accrediting Commissions on behalf of the Council for Higher Education Accreditation would also be pre-approved.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 2, 2009, 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 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.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, by mail at P.O. Box 2649, Harrisburg, PA 17105-2649, or by email at st-physical@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-6513 (continuing education providers), when submitting comments.

James L. Clahane, PT
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS

* * * * *

PRACTICE WITHOUT PHYSICIAN REFERRAL

* * * * *

§ 40.63. Continuing education.

* * * * *

(d) *Approved [sponsors; acceptable] courses and programs.*

(1) Courses and programs [provided by Board-approved sponsors] approved by the Board will be accepted as satisfying the continuing education requirement. It is the responsibility of the certificate holder to ascertain the approval status of the [sponsor] course before undertaking a continuing education activity.

* * * * *

(3) Sponsors of physical therapy continuing education seeking Board approval of individual courses shall submit an application at least 60 days prior to the date the continuing education course is due to take place on forms provided by the Board and pay the required fee. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons. The Board will not approve a [sponsor] course unless [it] the sponsor:

* * * * *

(5) A sponsor seeking approval who is unable to submit the application at least 60 days prior to the date the course is given may request a waiver in writing setting forth the reasons why the 60-day requirement could not be met.

(6) Approval of a course shall be valid for one year after approval. In the event that the sponsor is scheduling multiple courses, the sponsor shall indicate on the application each date the course is to be given.

* * * * *

(h) Preapproved sponsors. In addition to sponsors whose specific courses and programs are approved, the Board finds the following entities have currently met the standards for approved courses and programs. Accordingly, courses that otherwise meet all requirements for required continuing education are approved when offered by the following sponsors:

(1) The American Physical Therapy Association (APTA) and its components.

(2) The Federation of State Boards of Physical Therapy (FSBPT) and its jurisdictions.

(3) Graduate education programs accredited by The Commission on Accreditation in Physical Therapy Education (CAPTE).

(4) Post-entry level doctorate of physical therapy programs in an academic institution accredited by a regional accrediting organization recognized by the Council of Regional Accrediting Commissions on behalf of the Council for Higher Education Accreditation.

* * * * *

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE**

DATE: February 12, 2009

SUBJECT: Proposed Rulemaking:
State Board of Physical Therapy
Continuing education providers (16A-6513)

TO: Andrew C. Clark, Deputy General Counsel
Office of General Counsel

FROM: Thomas A. Blackburn, Counsel *TAB*
State Board of Physical Therapy

There are no significant legal and policy issues presented by this proposed rulemaking of the State Board of Physical Therapy. The proposed rulemaking would revise the process for seeking approval of continuing education courses and provide for preapproved sponsors of continuing education.

I certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, and that all information contained in the Preamble and Annex is correct and accurate.

TAB



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PHYSICAL THERAPY
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7134

September 2, 2009

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Physical Therapy
16A-6513: Continuing Education Providers

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Physical Therapy pertaining to 16A-6513: Continuing Education Providers.

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

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Clahane".

James L. Clahane, PT, Chairperson
State Board of Physical Therapy

JLC/TAB:rs

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Peter V. Marks, Executive Deputy Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Thomas A. Blackburn, Counsel
State Board of Physical Therapy
State Board of Physical Therapy

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

I.D. NUMBER: 16A-6513

SUBJECT: CONTINUING EDUCATION PROVIDERS

AGENCY: DEPARTMENT OF STATE
STATE BOARD OF PHYSICAL THERAPY

TYPE OF REGULATION

- X 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

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REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
HOUSE COMMITTEE ON PROFESSIONAL LICENSURE		
9/02/09	Kleaire Perkins	MAJORITY CHAIRMAN Michael McGuckan
SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE		
9/2/09	dmstehur	MAJORITY CHAIRMAN Robert Tomlinson
INDEPENDENT REGULATORY REVIEW COMMISSION		
ATTORNEY GENERAL (for Final Omitted only)		
LEGISLATIVE REFERENCE BUREAU (for Proposed only)		