

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

**Department of State,
Bureau of Professional and Occupational Affairs**

(2) Agency Number: 16

Identification Number:

44

IRRC Number:

2791

(3) Short Title:

Act 48 chiro schedule of civil penalties

(4) PA Code Cite:

49 Pa. Code § 43b.22

(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 Chiropractic**

(717)783-7155; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-7769; st-chiro@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 rulemaking would amend the schedule of civil penalties of the State Board of Chiropractic (Board) to include failure to complete the required amount of mandatory continuing education and practice on a lapsed license.

(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: | within two years of publ. |
| D. The expected effective date of the final-form regulation: | final promulgation |
| E. The date by which compliance with the final-form regulation will be required: | effective date |
| F. The date by which required permits, licenses or other approvals must be obtained: | effective date |

(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/chiro).

SECTION II: STATEMENT OF NEED

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

Section 5(a) of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) (63 P.S. § 2205(a)) authorizes the Commissioner, after consultation with the appropriate licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these boards. This rulemaking is also proposed under the disciplinary authority of the Board under sections 506(a)(9) and 506(a)(13) and 703 of the Chiropractic Practice Act (Act) (63 P.S. §§ 625.506(a)(9), 625.506(a)(13) and 625.703).

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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 proposed rulemaking would establish a civil penalty schedule for certain violations of the Act or Board regulations. Consistent with the practice of other licensing boards within the Bureau, the summary process under Act 48 would be a much more efficient manner of handling violations than the formal disciplinary process, while still ensuring licensees due process.

(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 and the Bureau have not identified any group of individuals or entities that would be 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 licensed chiropractors would be required to comply with the rulemaking, but it would affect only those licensees who either fail to timely complete the required amount of mandatory continuing education or practice after failing to renew licensure. There are approximately 4,150 currently licensed chiropractors.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(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 to members of the regulated community associated with compliance with the rulemaking. Those few members of the regulated community who are charged with these violations would enjoy a savings as a result of compliance with this proposed rulemaking, as a result of using the summary Act 48 citation process rather than full formal disciplinary action.

(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 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.

The Bureau and the Board would enjoy a savings as a result of compliance with this rulemaking, as a result of using the summary Act 48 citation process rather than full formal disciplinary action. There are no other costs or saving to state government associated with implementation of 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:						

Regulatory Analysis Form

Regulated Community						
Local Government						
State Government						
Total Costs	NA	NA	NA	NA	NA	NA
REVENUE LOSSES:						
Regulated Community						
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) projected	Current FY (FY 08-09) budgeted
Pa. State Board of Chiropractic	\$412,203	\$386,836	\$397,552	\$538,000

(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 rulemaking. Therefore, the above-identified benefits outweigh any cost.

(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 for an exposure draft. The Board discussed this proposed rulemaking in public session during the Board's meetings in May and November, 2007.

(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.

Regulatory Analysis Form

(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.

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

The states surrounding Pennsylvania all require licensed chiropractors to complete required continuing education as a condition of renewal and prohibit practice on an expired license. Although the surrounding states permit the imposition of a fine of varying maximum amounts on a licensee who has committed these violations, none of the surrounding states has set a specific fine for either failing to complete required continuing education or practice on an expired license.

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.

Except as provided in proposed rulemaking 16A-4318 (continuing education violations) which is being proposed simultaneously, this proposed rulemaking would not affect other regulations of the Board, the Bureau 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. Because the proposed rulemaking would permit the use of Act 48 citations, rather than formal disciplinary action, to sanction certain first-time violators, the Bureau, licensees and the Board will have a reduction in paperwork requirements for the disciplinary process.

(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

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INDEPENDENT REGULATORY
REVIEW COMMISSION
DO NOT WRITE IN THIS SPACE

(Pursuant to Commonwealth Documents Law)

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

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

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

BY: [Signature]
(DEPUTY ATTORNEY GENERAL)

Department of State, Bureau of Professional and Occupational Affairs
(AGENCY)

BY: [Signature]

JUN 17 2009

DOCUMENT/FISCAL NOTE NO. 16-44

Andrew C. Clark
MAY 22 2009

DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION:

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

BY: [Signature]
Basil L. Merenda

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

TITLE: Commissioner
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] 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

49 Pa. Code § 43b.22

SCHEDULE OF CIVIL PENALTIES - CHIROPRACTORS

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend § 43b.22 (relating to schedule of civil penalties – chiropractors) to read as set forth in Annex A.

Effective date

The amendment will be effective upon publication of the final rule-making in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (the Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards. Section 506(a)(9) of the Chiropractic Practice Act (Act) (63 P.S. § 625.506(a)(9)) authorizes the State Board of Chiropractic (Board) to take disciplinary action against a licensee for violating any provisions of the regulations of the Board, and section 506(a)(13) of the Act (63 P.S. § 625.506(a)(13)) authorizes the Board to take disciplinary action against a licensee for failing to perform any statutory obligation placed upon a licensed chiropractor. Section 507(a) of the Act (63 P.S. § 625.507(a)) requires a licensed chiropractor to complete at least 24 hours of continuing education during each biennial renewal cycle. Section 703 of the act (63 P.S. § 625.703) authorizes the Board to levy a civil penalty of up to \$1,000 on any licensee who violates any provision of the act.

Background and Need for the Amendment

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the licensing boards being accomplished through the Act 48 citation process. The Board has not previously had an Act 48 schedule of civil penalties.

As is being done for other licensing boards with continuing education requirements, the Commissioner is proposing a civil penalty schedule for violation of the continuing education requirements for licensees of the Board, because the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees due process. Payment of the civil penalty will not relieve a licensee of the obligation to complete the required amount of mandatory continuing education. Under the separate rulemaking being proposed by the Board, a licensee who fails to complete the required amount of mandatory continuing education during the biennial renewal period will also be required to complete the required continuing education during the next six months; failure to complete the required

continuing education by that deadline will subject the licensee to formal disciplinary action.

Also, the Board's current regulation at 49 Pa. Code § 5.17(g) prohibits a licensee whose license has lapsed from practicing chiropractic in this Commonwealth. As is being done for other licensing boards, the Commissioner is proposing a civil penalty schedule for practice on a lapsed or expired license, because the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees due process. Because failure to renew a license might be an attempt to avoid the continuing education or malpractice insurance requirements, use of an Act 48 citation for lapsed license practice will be limited to those first-time offenders who are in compliance with the continuing education requirements. A licensee who practiced on a lapsed license without having complied with the continuing education or malpractice insurance requirements will instead be subject to formal disciplinary action where the Board has the authority to suspend or revoke a license.

Description of the Proposed Amendments

The Commissioner, in consultation with the Board, proposes for a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period a civil penalty \$50 for each credit hour that the licensee is deficient, up to a maximum of \$1,000. Second and subsequent offenses would not be subject to an Act 48 citation, but rather would proceed through the formal disciplinary process. The Commissioner, in consultation with the Board, also proposes for a first offense violation of practicing on a lapsed or expired license while in compliance with continuing education and malpractice insurance requirements a civil penalty \$250 for practicing less than 6 months, \$500 for 6 to 12 months, and \$1,000 for 12 to 24 months. Second and subsequent offenses would not be subject to an Act 48 citation, but rather would proceed through the formal disciplinary process.

Compliance with Executive Order 1996-1

The Board considered and approved the proposed amendments at regularly scheduled public meetings. The Commissioner reviewed the proposed amendments and considered their purpose and likely impact upon the public and the regulated community under the directives of Executive Order 1996-1. The proposed rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no adverse fiscal impact on the Commonwealth, its political subdivisions, or the private sector. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions, or the private sector. Instead, the proposed rulemaking will reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

Sunset Date

Professional licensure statutes require each board to be self-supporting. Therefore, the Commissioner and the boards continuously monitor the cost effectiveness of their regulations. As a result, 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 11, 2009, the Commissioner 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.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, at P. O. Box 2649, Harrisburg, PA 17105-2649 or by e-mail at ST-CHIRO@state.pa.us, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16-44 (Act 48 chiro schedule of civil penalties), when submitting comments.

Basil L. Merenda
Commissioner of Professional and Occupational
Affairs

ANNEX A

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL
PENALTIES AND PROCEDURES FOR APPEAL

* * *

§ 43b.22. Schedule of civil penalties – chiropractors.

STATE BOARD OF CHIROPRACTIC

Violation Under
63 P.S.

Title/Description

Penalties

Section 625.507(a)

Failure to timely complete the
required amount of continuing
education

First offense - \$50 per hour of
deficiency, not to exceed \$1,000
Subsequent offense – formal action

Violation Under
49 Pa. Code

Title/Description

Penalties

§ 5.17(g)

Practice on a lapsed license in
compliance with CE and
malpractice insurance
requirements – first offense

Less than 6 months - \$250
6 months to 12 months - \$500
12 months to 24 months - \$1,000



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7192

September 11, 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 Chiropractic
16-44: Schedule of Civil Penalties - Chiropractors

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Chiropractic pertaining to the schedule of civil penalties for chiropractors.

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 that reads "Basil L. Merenda".

Basil L. Merenda
Commissioner
Bureau of Professional and Occupational Affairs

KGM/TAB:pah
Enclosure

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

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 16-44
SUBJECT: SCHEDULE OF CIVIL PENALTIES - CHIROPRACTORS
AGENCY: DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

TYPE OF REGULATION


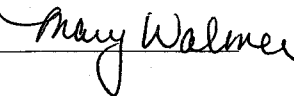
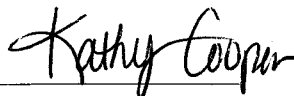

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/11/09		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Michael McGeehan</u>
9/11/09		SENATE COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Robert Tomlinson</u>
9/11/09		INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only)
9/11/09		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

June 18, 2009