

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

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(1) Agency:

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

(2) Agency Number: 16A

Identification Number: 4929

IRRC Number: 2820

(3) Short Title:

Behavior Specialists

(4) PA Code Cite:

49 Pa. Code §§ 16.11, 16.13, 18.521 – 18.527

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

Primary Contact: David Green, Counsel, State Board of Medicine, 2601 North Third Street, Harrisburg, PA 17105; Phone Number: (717) 783-7200; Fax Number: (717) 787-0251; E-mail address: davgreen@state.pa.us

Secondary Contact: Cynthia Montgomery, Regulatory Counsel, Department of State, 2601 North Third Street, Harrisburg, PA 17105; Phone Number: (717) 783-7200; Fax Number: (717) 787-0251; E-mail address: cymontgome@state.pa.us

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

(All Comments will appear on IRRC'S website)

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

X Final Regulation

Regulatory Analysis Form

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

Section 3 of the act of July 9, 2008 (P.L. 885, No. 62) (Act 62) added section 635.2 of the Insurance Company Act of 1921 (Insurance Law) (40 P.S. § 764h) to require, in general, that insurance companies cover diagnostic assessment and treatment of autism spectrum disorders for those under age 21 when provided by someone licensed or certified in this Commonwealth. Section 635.2(g) of the Insurance Law requires the State Board of Medicine (Board), in consultation with the Department of Public Welfare, to promulgate regulations to provide for the licensure or certification of behavior specialists. This rulemaking implements licensure of behavior specialists, as required by the Act 62 amendments to the insurance law.

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

- A. The date by which the agency must have received public comments: **March 15, 2010**
- B. The date or dates on which public meetings or hearings were held: **April 27, 2009, June 22, 2010, August 24, 2010.**
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Early 2011**
- D. The expected effective date of the final-form regulation: **Upon publication as final-form rulemaking.**
- E. The date by which compliance with the final-form regulation will be required: **Upon publication as final-form rulemaking – Anticipated Early 2011.**
- F. The date by which required permits, licenses or other approvals must be obtained: **Not applicable.**

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

The Board continuously reviews its regulations at its scheduled meetings.

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SECTION II: STATEMENT OF NEED

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

This rulemaking is authorized by sections 8 and 25 of the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.8 and 422.25) and by section 635.2(g) of the Insurance Law (40 P.S. § 764(g)).

(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.

Yes, as explained in the response to question (8). The rulemaking is not mandated by any other 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.

There is a compelling public interest in providing insurance coverage for individuals under 21 years of age for the diagnostic assessment and treatment of autism spectrum disorders. To facilitate such coverage on the part of insurers, the regulations establish criteria for the licensure by the State Board of Medicine of those individuals qualified by education and experience to provide those services.

(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 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 rulemaking.

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(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.

In addition to the approximately 300 persons in Pennsylvania certified by the Behavior Analyst Certification Board, the Board estimates that perhaps another few hundred persons will apply for licensure. Because licensure is not mandated, not all persons practicing as behavior specialists will be required to comply with the rulemaking. For example, licensed psychologists and licensed social workers who may provide these types of services and bill for those services under the licensee's existing license number need not become licensed as behavior specialists.

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.

Persons currently providing services as behavior specialists who wish to become licensed will experience an increase in costs due to becoming licensed. The Board estimates that approximately 300 persons will apply for licensure during each biennial renewal cycle. Additionally, the Board estimates that during each renewal cycle beginning January 1, 2011, approximately 300 licensees will renew their licenses and 10 persons will apply to reactivate an expired license. The amount of these fees to be paid to the Board are identified in the response to question 19. Persons seeking licensure will first apply in the first half of fiscal year 2010-11, which is the last quarter of the 2010-11 biennial renewal period, and they will be required to renew for the 2012-13 biennial renewal period. The Board also assumes an equal distribution of applications throughout each time period other than the initial startup, except that all persons who renew without having to reactivate the certificate will do so at the beginning of the period. Based upon these assumptions and estimates and the fees discussed below, the Board anticipates costs to licensees as shown in the table in response to question 20.

It is expected that the Board will receive 150 applications for licensure each fiscal year, which will generate fees of \$11,250 [$\$75 \times (\frac{1}{2} 300)$] in each fiscal year beginning with 2010-11 and continuing for the foreseeable future. The Board anticipates receipt of renewal fees of \$22,500 [$\75×300] in fiscal year 2012-13 and \$45,000 [$\75×600] in 2014-15. Therefore, based on anticipated yearly initial applications, anticipated renewal fees would increase by \$22,500 each biennium.

The Act 62 amendments to the Insurance Law require the Board to implement licensure of behavior specialists. The Board has drafted the proposed rulemaking to minimize the costs of licensure. Other than application fees to be charged by the Board, the Board cannot estimate the legal, accounting, consulting procedures or other costs associated with licensure.

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

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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. 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.

Because licensure fees will recover the cost of Board operations, there should be no net cost or savings to the Board associated with the implementation of the proposed rulemaking. There are no other costs or savings to state government associated with compliance with the 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 2010-11	FY +1 2011-12	FY +2 2012-13	FY +3 2013-14	FY +4 2014-15	FY +5 2015-16
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	\$11,250	\$11,250	\$33,750	\$11,250	\$56,250	\$11,250
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

Program	FY -3 2007-2008	FY -2 2008-2009	FY -1 2009-2010	Current FY 2010-2011
State Board of Medicine	\$5,836,998.70	\$5,800,654.85	\$4,834,369.34	\$6,349,000.00

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

The minimal cost associated with initial licensure and biennial renewal (\$75) is outweighed by the licensee's ability to receive payment from insurance companies for the provision of autism behavior services.

(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.

Prior to the publication of the proposed rulemaking, the Board met with representatives of the Pa. Department of Public Welfare (DPW) pursuant to the act's provision that the two entities consult in promulgating these regulations. Subsequent to the publication of the proposed rulemaking, the Board received comments from the following: State Senator Don White; NHS Human Services (NHS); Blue Cross of Northeastern Pennsylvania (Blue Cross); Felicia Hurewitz, Ph.D. and Mareile Koenig, Ph.D., who had previously served as co-facilitators of the Pa. Autism Task Force Education / Certification subcommittee (Hurewitz / Koenig); Magellan Health Services (Magellan); Pennsylvania Health Law Project (PHLP); Pennsylvania Counseling Association (PCA); National Association of Social Workers (NASW); Scott Cavett; The Insurance Federation of Pennsylvania, Inc.; Commonwealth of Pennsylvania Department of Public Welfare (DPW); and Highmark.

In addition, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) in response to their review of the regulations under the Regulatory Review Act.

Subsequently, the Board's health-related professions committee on 3 occasions discussed this proposed rulemaking at a series of public meetings, during which representatives from the Department of Public Welfare, organizations of persons practicing similar to behavior specialists, and other interested parties attended and participated in the discussions. Additionally, the Board discussed the proposed rulemaking at public meetings of the Board, which are routinely attended by members of the regulated community and their professional associations.

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(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.

This rulemaking would not be more stringent and would 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?

Although this rulemaking permits persons to become licensed as behavior specialists, it does not prohibit any person not licensed from providing services. The rulemaking does 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 rulemaking 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.

Because this rulemaking implements licensure for behavior specialists, persons seeking licensure by the Board will have to go through the application process described above. This proposed rulemaking would not require any legal, accounting or consulting procedures or any additional recordkeeping or other paperwork.

(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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(Pursuant to Commonwealth Documents Law)

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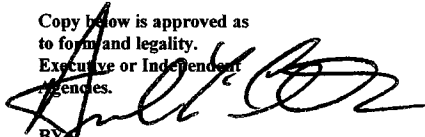
Copy below is hereby approved as to form and legality. Attorney General

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BY: _____
(DEPUTY ATTORNEY GENERAL)

STATE BOARD OF MEDICINE
(AGENCY)

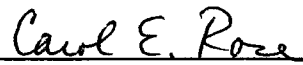
BY: 
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16A-4929

DATE OF APPROVAL

DATE OF ADOPTION: _____

NOV 23 2010
DATE OF APPROVAL

BY: 
Carol E. Rose, M.D.

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

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, CHAPTERS 16 AND 18

GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS; PRACTITIONERS
OTHER THAN MEDICAL DOCTORS

BEHAVIOR SPECIALISTS



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

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May 12, 2011

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Medicine
16A-4929: General License, Certification and Registration Provisions;
Practitioners Other than Doctors – Behavior Specialists

Dear Chairman Lutkewitte:

At the request of the House Professional Licensure Committee (HPLC), we have amended the preamble for this regulation to address concerns raised by the National Association of Social Workers (NASW) and, in so doing, we also have attempted to answer the remaining questions raised in IRRC's May 4, 2011 e-mail.

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

Sincerely,

Carol E. Rose

Carol E. Rose, M.D., Chairperson
State Board of Medicine

CER/DMG:pah

Enclosure

cc: Katie True, Acting Commissioner
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
David M. Green, Counsel
State Board of Medicine
State Board of Medicine

The State Board of Medicine (Board) hereby amends §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and hereby adds §§ 18.521-18.527 (relating to behavior specialists), 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 8 and 25 of the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.8 and 422.25) and under section 635.2(g) of The Insurance Company Law of 1921 (Insurance Law) (40 P.S. § 764h(g)).

Background and Purpose

Section 3 of the act of July 9, 2008 (P.L. 885, No. 62) (act) amended the Insurance Law to provide for autism spectrum disorders coverage. In general, an insurer is required to provide covered individuals under 21 years of age coverage for the diagnostic assessment and treatment of autism spectrum disorders. An insurer shall contract with and accept as a participating provider any autism service provider that is licensed in this Commonwealth. Section 635.2(g)(1) of the Insurance Law requires the Board, in consultation with the Department of Public Welfare, to promulgate regulations to provide for licensure or certification of behavior specialists. Section 635.2(f)(4) of the Insurance Law defines “behavior specialist” as “an individual who designs, implements or evaluates a behavior modification intervention component of a treatment plan, including those based on applied behavior analysis, to produce socially significant improvements in human behavior or to prevent loss of attained skill or function, through skill acquisition and the reduction of problematic behavior.”

Not all persons providing as autism services will necessarily be required to comply with the rulemaking. Various existing licensed professionals such as psychologists, social workers, clinical social workers and professional counselors, currently provide treatment of autism spectrum disorders pursuant to a treatment plan. To the extent the scope of practice under such a license includes diagnostic assessment or treatment of autism spectrum disorders, this rulemaking is not intended to impact that scope of practice or the licensee’s ability to qualify as a participating provider.

This final rulemaking implements licensure of behavior specialists under the Insurance Law as amended.

Summary of Comments and Responses to Proposed Rulemaking

Notice of the proposed rulemaking was published at 40 Pa. B. 884 (February 13, 2010). The Board received comments from the following: State Senator Don White; NHS Human Services (NHS); Blue Cross of Northeastern Pennsylvania (Blue Cross); Felicia Hurewitz, Ph.D. and Mareile Koenig, Ph.D., who had previously served as co-facilitators of the Pa. Autism Task Force Education

/ Certification subcommittee (Hurewitz / Koenig); Magellan Health Services (Magellan); Pennsylvania Health Law Project (PHLP); Pennsylvania Counseling Association (PCA); National Association of Social Workers (NASW); Scott Cavett; The Insurance Federation of Pennsylvania, Inc.; Commonwealth of Pennsylvania Department of Public Welfare (DPW); and Highmark.

In addition, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) in response to their review of the regulations under the Regulatory Review Act. Responses to the comments have been grouped under general categories as follows:

Purpose.

Several of the commentators suggested that the public would be better served if the Board required “licensure” as opposed to “certification” of behavior specialists. Although the proposed rulemaking spoke in terms of “certification,” the Board took into consideration the comments of NASW, Highmark, Blue Cross, Senator White, the Insurance Federation of Pennsylvania, Inc. and IRRC, all of whom preferred the term “licensure.” Among the varied reasons for this concern, the most compelling was the avoidance of the potential for a “two-tiered credentialing process” that might cause issues with contracting or payment of behavioral specialists by insurance companies. Section 635.2(g) of the Insurance Law directed the Board’s promulgation of regulations “providing for the licensure or certification of behavior specialists.” Given that section 635.2 of the Insurance Law articulates its purpose as providing insurance coverage for the treatment of autism spectrum disorders, and without taking a position as to whether “certification” or “licensure” of behavior specialist would connote a higher standard or classification, the Board has changed all relevant references from “certification” and “certificate” to “licensure” and “license.” In response to an inquiry from NHS, individuals who are already Board Certified Behavior Analysts still must become licensed by the Board. Such eligibility was advocated by Magellan and Hurewitz / Koenig in their respective commentaries. Note that under § 18.524(d) (relating to criteria for certification as behavior specialist), completion of BACB-approved training and continuing education credits are acceptable for licensure as a behavior specialist.

Definitions.

Autism has been described as “a group of developmental disorders that impair social interactions and often language development.” (Saey, *Science News*, July 3, 2010, p. 12). The Insurance Law defines autism spectrum disorders via incorporation of the more detailed definition in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*. IRRC expressed concern that the definitions section of the regulation cited the sections of the act, followed by a verbatim recitation of the definition provided in the act. IRRC suggested either a clarifying definition, if necessary, or merely a cite to the act, and to include the term “treatment plan,” which was defined in the act, but not the proposed rulemaking. The terms used and defined within act are terms of art in the behavior science or autism community. The same may be said for some of the terms used to define those terms. The Board sought input from stakeholders in crafting the regulations’ definitions, and well as the definition of some of the words within those definitions, resulting in the final-form of §18.522 (relating to definitions). The definition of “autism spectrum

disorders” in the regulation adds the descriptive “neurobehavioral.” The Board also has added clarifying definitions for “behavior challenges,” “consequence,” “stimulus,” “treatment plan,” and “variables” as well. Further, the Board refined the definition of “applied behavioral analysis” to include evidence-based principles suggested by Hurewitz / Koenig. The only definition left unchanged was for “behavior specialist,” in which the citation to the act was deleted as suggested by IRRC. NHS questioned whether the definition of “diagnostic assessment of autism spectrum disorders” included those made by school psychologists and psychiatrists. Psychiatrists, being Board-licensed physicians would be included within the “licensed physician” provision. Diagnostic assessment by licensed psychologists are included, but those of school psychologists who are not licensed by the State Board of Psychology, would not be included. Note should be taken that, in §18.524(a) (relating to criteria for licensure as behavior specialist), a major course of study in school psychology is a criterion for licensure as a behavior specialist.

Application for Licensure.

IRRC commented that § 18.523 (relating to application for licensure as behavior specialists) lacked specifics regarding the “necessary supporting documents” to be submitted, and in some instances updated, in support of an application for licensure. Section 41 of the act (63 P.S. § 422.41) authorizes the Board to refuse to issue a license or certificate for, among other reasons, criminal convictions or acting in a manner as to present an immediate and clear danger to the public health or safety. Magellan advocated adding criminal background checks and Act 33 clearances to the required documentation. The Board responded by adding a criminal history record information report, a child abuse history clearance and an FBI national crime certification center (NCIC) criminal record as being among the documents that would indicate whether the applicant may reasonably be expected to treat or otherwise interact safely with patients under 21 years of age. The patients to whom these services are to be provided are members of a particularly unique and vulnerable segment of the population. These services will be provided often in environments less monitored or structured than, for example, a hospital or physician’s office. Such environments may not permit the physical or operational opportunity for a health care professional or other appropriate adult to maintain periodic visual interaction with the licensee during the treatment session. Requiring production of the referenced documentation from law enforcement agencies would minimize the likelihood, to the degree possible, of inappropriate conduct by the licensee when in the presence of the patient.

Upon consideration of IRRC’s request for a timeframe within which it would license an applicant upon receiving the application and supporting documents, the Board submits that the process of requesting, submitting, supplementing, and reviewing the documentation from various criminal information repositories renders any articulation of a specific timeframe speculative and impractical. The Board’s goal is to assemble all timely and complete information as promptly as possible, and once in possession of it, to reach its decision on licensure and notify the applicant without undue delay.

The IRRC comments sought clarification of the term “convicted,” and the final rulemaking enumerates additional criteria under which it will deny an application in addition to a felony conviction. The regulation broadens the definition of the term “convicted” as it relates to crimes for

which the Commonwealth's "Megan's Law" requires registration. The regulation also adds a "good moral character" prerequisite.

Criteria for licensure.

In response to IRRC's comments, the Board has included within § 18.524(a) the statutory criterion for good moral character. The required documentation to verify that criterion (a criminal history record information report, a child abuse history clearance and an FBI national crime certification center (NCIC) criminal record) is set forth in § 18.523. IRRC, Hurewitz / Koenig, PCA, NHS and the HPLC commented that the use of the phrase "another related field" in § 18.524(a) in describing the major course of study in which an applicant for licensure must possess a master's or higher degree. Several examples are given, such as clinical or counseling psychology, special education, social work, speech therapy, and occupational therapy. The list is not meant to be exhaustive, nor may it reasonably be made so. In response to comments, additional examples of a "related field" have been added to include nursing, professional counseling, developmental psychology and behavioral analysis. In response to comments from Blue Cross and Magellan, although licensees such as psychologists and social workers remain authorized to continue practice within the scope of their respective professions, their educational backgrounds also may fulfill a criterion for licensure as a behavior specialist.

The regulations at § 18.524(b) has been amended to address IRRC's request that the clinical experience requirement involve patients under 21 years of age, given that this is the specific group that will be served by the behavior specialists for which the Insurance Law authorizes licensure. NHS commented that the regulation needed to clarify the required number of hours involving functional behavior assessments as well as the clinical experience be specific to patients under 21 years of age. The Board retained the "patients under 21 years of age" requirement for functional behavior assessments at § 18.524(b), but not for the clinical experience at § 18.524(c), in order to maximize the pool of qualified professionals eligible for licensure. The Board retained the "related field" clinical experience option, and notes here that this would include services rendered in capacities of teacher in an autistic support class, job coach, residential program manager or director, or summer therapeutic activities program to children or adults with autism spectrum disorders. In their comments, IRRC and HPLC expressed concern that "direct" clinical experience should not include experience obtained in "passive approaches" such as viewing videos. In response, the Board has dropped the word "direct" from the final rulemaking in favor of "in-person," which the Board intends to be interpreted as face-to-face contact. Hurewitz / Koenig suggested that the clinical experience be "supervised." The Board considered this comment, however, the statute makes no provision for supervised clinical experience as a condition of licensure – only that applicants have completed 1,000 hours experience with individuals with behavioral challenges or autism spectrum disorders. The Board believes adding a supervision component would be contrary to the legislative intent and exceed the Board's statutory authority.

IRRC questioned how the Board will verify that an applicant has obtained the requisite hours of clinical experience. Neither the actual conduct of functional behavior assessments nor the candidate's performance of the actual activities and tasks comprising the clinical experience need themselves be supervised. To the extent the applicant's experience was under supervision, the

applicant's clinical supervisor or other person employing the applicant will corroborate the number of the those hours in writing as part of the application process. To the extent that the applicant's experience was independent, the Board will otherwise verify the experience.

In commenting upon the final rulemaking, NASW for the first time questioned when a candidate could earn the 1,000 hours of experience. Because so many behavior specialists are new graduates, NASW suggested that the experience with individuals with behavioral challenges be acquired during or upon completion of the master's degree programs, and that experience in a related field with individuals with autism spectrum disorders be acquired upon completion of the bachelor's programs. The Board did not previously specify a point because it did not intend to unnecessarily limit the candidate's ability to achieve the required qualifications. The Board agrees with NASW that experience during the master's degree program or otherwise subsequent to a bachelor's degree program would be acceptable.

IRRC's comments regarding § 18.524(d) seek clarification regarding "relevant training programs," the standards for determining relevance, and the absence of the number of hours of qualifications of persons involved in providing the training. The Board's modifications recognize the qualifications of the Behavior Analyst Certification Board (BACB) and DPW's Bureau of Autism Services (BAS) as arbiters of an accredited university's course work (as opposed to "training"), the applicant's completion of which is a prerequisite for licensure. The revisions also specify how the 90 hours of course work or training in evidence-based practices is to be allocated among various subjects, as suggested by Hurewitz / Koenig. Referencing the IRRC commentary regarding the clinical experience requirement in § 18.524(b) and (c), the Board's revisions also specify that the course work may include face-to-face instructor-led or online distance education, as well as other qualifying hours from specified sources.

Renewal of licensure

IRRC, Blue Cross, Senator White and HPLC recommended adding continuing education requirements to the licensure renewal process in § 18.525 (relating to renewal of licensure as behavior specialist). However, neither the Medical Practice Act nor the Insurance Law specifically require or authorize the Board to require behavior specialists to complete continuing education. As a governmental agency created by statute, the activities of the Board are limited to those authorized by statute. Without statutory authority, any attempt by the Board to promulgate regulations requiring behavior specialists to complete continuing education would be a nullity. By way of further explanation, although it is not a requirement under the Insurance Law, many of the anticipated licensees already will have been licensed by another professional board or certified by the Department of Education to engage in the same activity, and are obligated to earn continuing education credits for renewal of those credentials. IRRC suggested that the Board specify in § 18.525(c) "the manner prescribed by the Board" in which the behavior specialist license will be renewed. The Board will permit licensees to renew either online or by submitting a paper renewal application. The language used in §18.525 was chosen to be applicable to both methods.

Inactive status of licensure

IRRC, PCA and Blue Cross expressed concern with § 18.526 (relating to inactive status of licensure as behavior specialist) pertaining to the concept of “retroactive” reactivation of licensure. All of the specifics underlying IRRC’s concerns are well-taken, shared by the Board, and on further review are not inconsistent with the goals of the statute, which is the payment via insurance of services provided by behavior specialists to autism patients under 21 years of age. Accordingly, the Board has removed all provisions relating to “retroactive” reactivation, thereby eliminating that option for licensees. It is to be noted that an inactive or expired license will not necessarily prevent a behavior specialist from providing these services, but only from receiving payment for that service in the manner provided by the Insurance Law. The contents of proposed § 18.526(b), cited in HPLC’s suggestion for substituting “lapsed” for “inactive” have been deleted.

Disciplinary action

PCA commented on the need for behavior specialists to be licensed, as opposed to certified, in order to provide the public with recourse and the Board with authority to impose sanctions on them. The change of certification to licensure throughout the regulations, including § 18.527 (relating to disciplinary action for licensed behavior specialists), is responsive to this concern.

Miscellaneous clarity

IRRC made several formatting suggestions to enhance the organization of §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees), which have been adopted as indicated in the Annex.

The final rulemaking also renumbers and amends § 16.13(i) to set forth the fees associated with behavior specialist licensure to be charged by the Board. In order to recover the costs of processing those applications, the fee for initial application for licensure as behavior specialist and for reactivation of a previously-issued behavior specialist license each is \$75. In order to provide for an appropriate share of the general costs of operating the Board, the renewal fee for a behavior specialist also is \$75. NHS expressed concern that the fees could potentially cause hardships for agencies and/or staff thereby possibly decreasing the “number of employees agencies ‘certify’ as a behavior specialist.” Many of the concerns similarly expressed by NHS have been addressed and the Board does not perceive the remaining fee issue as an impediment to licensure, especially given the purpose of the statute to create a significant additional source of payment for treatment rendered by behavior specialists.

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. Individuals who choose to pursue licensure as a behavior specialist will incur initial costs and paperwork requirements in applying for licensure, and biennial renewal costs.

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 February 2, 2010, 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.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board also provided IRRC, SCP/PLC, and HPLC with copies of comments received as well as other documents when requested. In preparing the final-form regulation, the Board has considered the comments received from IRRC, the HPLC, and the public.

Under section 5.1(j.2) of the Regulatory Review Act, (71 P.S. §745.5a(j.2)), on April 27, 2011, the final-form rulemaking was approved by the HPLC. On May 18, 2011, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 19, 2011 and approved the final-form rulemaking.

Contact Person

Interested persons may obtain information regarding the final-form rulemaking by writing to Steven Dade or David Green, Board Counsel, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, or by e-mail at sdade@state.pa.us or davgreen@state.pa.us.

Findings

The Board 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 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The amendments to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 40 Pa. B. 884.

- (4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in this Preamble.

Order

The Board orders that:

- (a) The regulations of the Board at 49 Pa. Code Chapters 16 and 18, are amended by amending §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and by adding §§ 18.521-18.527 (relating to behavior specialists), 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 to 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.

Carol E. Rose, MD
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—

GENERAL PROVISIONS

* * * * *

Subchapter B. GENERAL LICENSE, CERTIFICATION AND

REGISTRATION PROVISIONS

* * * * *

§ 16.11. Licenses, certificates and registrations.

* * * * *

(b) The following non-medical doctor licenses and certificates are issued by the Board:

* * * * *

(6) ~~Certification as behavior~~ BEHAVIOR specialist LICENSE.

* * * * *

(c) The following registrations are issued by the Board:

* * * * *

(12)(10) ~~Biennial registration of a behavior specialist certification~~ LICENSE.

* * * * *

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(i) *BEHAVIOR SPECIALIST LICENSE:*

APPLICATION FOR LICENSE AS BEHAVIOR SPECIALIST.....\$75

BIENNIAL RENEWAL OF BEHAVIOR SPECIALIST LICENSE.....\$75

APPLICATION FOR REACTIVATION OF BEHAVIOR SPECIALIST
LICENSE.....\$75

(J) *Verification or Certification:*

* * * * *

(K) *Examination Fees:*

* * * * *

~~(k) *Behavior Specialist Certification:*~~

~~Application for certification as behavior specialist\$70~~

~~Biennial renewal of behavior specialist certification.....\$75~~

~~Application for reactivation of behavior specialist certification.....\$70~~

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CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS

OTHER THAN MEDICAL DOCTORS

* * * * *

Subchapter I. BEHAVIOR SPECIALISTS

§ 18.521. Purpose.

This subchapter implements section 635.2(g) of the The Insurance Company Law of 1921 (40 P.S. § 764h(g)), as amended by section 3 of the act of July 9, 2008 (P.L. 885, No. 62) to provide for the ~~certification~~ LICENSURE of behavior specialists.

§ 18.522. Definitions.

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

Applied behavioral analysis – ~~As defined in section 635.2(f)(1) of the Insurance Company Law of 1921 (40 P.S. § 764h(f)(1)), the~~ THE design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function, including WHICH INCLUDES:

- (1) THE the use of direct observation, measurement and functional analysis of the relations between environment and behavior.
- (2) THE ATTEMPT TO SOLVE BEHAVIOR CHALLENGES USING EVIDENCE-BASED PRINCIPLES AND PRACTICES OF LEARNING AND BEHAVIOR.
- (3) THE ANALYSIS OF THE RELATIONSHIP BETWEEN ANY STIMULUS, CONSEQUENCE OR OTHER VARIABLE AS DEFINED IN THIS SECTION. THE CHANGES OF STIMULI, CONSEQUENCES, OR OTHER VARIABLES MAY OCCUR INDIVIDUALLY, AS A COMBINATION, OR IN RELATIONSHIP WITH EACH OTHER. THE CHANGE OF STIMULI, CONSEQUENCES OR OTHER VARIABLES MAY BE EXTERNAL OR INTERNAL TO THE PERSON WHOSE BEHAVIOR IS BEING ANALYZED.

Autism spectrum disorders – ~~As defined in section 635.2(f)(3) of the Insurance Company Law of 1921, any~~ ANY of the pervasive developmental NEUROBEHAVIORAL disorders defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders

(DSM), or its successor, including autistic disorder, Asperger's disorder and pervasive developmental disorder not otherwise specified.

BACB – BEHAVIOR ANALYST CERTIFICATION BOARD.

BAS – THE BUREAU OF AUTISM SERVICES OF THE DEPARTMENT OF PUBLIC WELFARE.

BEHAVIOR CHALLENGES – SYMPTOMS THAT INCLUDE IMPAIRMENT IN RECIPROCAL SOCIAL INTERACTION, QUALITATIVE IMPAIRMENT IN COMMUNICATION, THE PRESENCE OF INTERNALIZING OR EXTERNALIZING BEHAVIORS SUCH AS SUICIDAL IDEATION, SELF-INJURIOUS BEHAVIORS, AGGRESSION, DESTRUCTIVE OR DISRUPTIVE BEHAVIORS, ISOLATION AND SOCIAL WITHDRAWAL, RITUALISTIC REPETITIVE AND STEREOTYPIC PATTERNS OF BEHAVIORS, OR EXTREME DIFFICULTY IN ADAPTING TO CHANGE AND TRANSITION.

Behavior specialist – As defined in section 635.2(f)(4) of the Insurance Company Law of 1921, an AN individual who designs, implements or evaluates a behavior modification intervention component of a treatment plan, including those based on applied behavioral analysis, to produce socially significant improvements in human behavior or to prevent loss of attained skill or function, through skill acquisition and the reduction of problematic behavior.

CONSEQUENCE – ANY RESULTING DIRECTLY MEASURABLE CHANGE OF A PERSON'S BEHAVIOR PRODUCED BY A CHANGE IN A STIMULUS OR STIMULI.

Diagnostic assessment of autism spectrum disorders – As defined in section 635.2(f)(5) of the Insurance Company Law of 1921, medically MEDICALLY necessary assessments, evaluations or tests performed by a licensed physician, licensed physician assistant, licensed

psychologist or certified registered nurse practitioner to diagnose whether an individual has an autism spectrum disorder.

STIMULUS – AN EVENT, CIRCUMSTANCE OR CONDITION THAT CAN BE CHANGED OR DOES CHANGE BASED UPON THE BEHAVIOR SPECIALIST’S MANIPULATION.

TREATMENT PLAN – A PLAN FOR THE TREATMENT OF AUTISM SPECTRUM DISORDERS DEVELOPED BY A LICENSED PHYSICIAN OR PSYCHOLOGIST PURSUANT TO A COMPREHENSIVE EVALUATION OR REEVALUATION PERFORMED IN A MANNER CONSISTENT WITH THE MOST RECENT CLINICAL REPORT OR RECOMMENDATIONS OF THE AMERICAN ACADEMY OF PEDIATRICS.

VARIABLES - ANY OBSERVED OR MANIPULABLE CONDITION WHICH CAN BE CHANGED OR DOES CHANGE AND ANY DIRECTLY MEASURABLE CHANGE OF A PERSON’S BEHAVIOR PRODUCED BY THE CHANGE.

§ 18.523. Application for ~~certification~~ LICENSURE as behavior specialist.

(a) An applicant for ~~certification~~ LICENSURE as a behavior specialist shall submit, on forms supplied MADE AVAILABLE by the Board, a completed application, including all necessary supporting documents, for ~~certification~~ LICENSURE as a behavior specialist and pay the fee in § 16.13(k) (I) (relating to licensure, certification, examination and registration fees) for application for ~~certification~~ LICENSURE as A behavior specialist.

(1) AMONG THE SUPPORTING DOCUMENTS, THE APPLICANT SHALL SUBMIT TO THE BOARD:

(i) A CRIMINAL HISTORY RECORD INFORMATION REPORT COMPLETED BY THE STATE POLICE IN THE STATES WHERE THE

APPLICANT CURRENTLY RESIDES AND HAS RESIDED DURING THE PREVIOUS 10 YEARS COMPLETED NO MORE THAN 90 DAYS PRIOR TO THE DATE THE APPLICATION IS RECEIVED IN THE BOARD OFFICE.

(ii) A CHILD ABUSE HISTORY CLEARANCE COMPLETED BY THE DEPARTMENT OF PUBLIC WELFARE NO MORE THAN 90 DAYS PRIOR TO THE DATE THE APPLICATION IS RECEIVED IN THE BOARD OFFICE.

(iii) AN FBI NATIONAL CRIME INFORMATION CENTER (NCIC) CRIMINAL RECORD COMPLETED NO MORE THAN 90 DAYS PRIOR TO THE DATE THE APPLICATION IS RECEIVED IN THE BOARD OFFICE.

(2) THE APPLICANT MUST PROVIDE UPDATES TO ANY DOCUMENTS IN POSSESSION OF THE BOARD FOR MORE THAN 6 MONTHS WHILE THE APPLICATION REMAINS PENDING.

(b) Except as otherwise provided in subsections (c) and (d), the Board will ~~certify~~ LICENSE as a behavior specialist an applicant who demonstrates that the applicant satisfies the requirements of section 635.2(g)(2) of the Insurance Company Act of 1921 (40 P.S. § 764h(g)(2)) for registration as a behavior specialist, as provided in § 18.524 (relating to criteria for ~~certification~~ LICENSURE as behavior specialist), and otherwise complies with this subchapter.

(c) The Board may deny an application for ~~certification~~ LICENSURE as a behavior specialist upon the grounds for disciplinary action set forth in § 18.527 (relating to disciplinary action for ~~certified~~ LICENSED behavior specialist).

(d) The Board will not grant an application for ~~certification~~ LICENSURE as a behavior specialist of an applicant who:

(1) has HAS been convicted of a felony offense as provided in section 635.2(g)(3) of the Insurance Company Act of 1921, unless at least 10 years have elapsed from the date of conviction and the applicant has satisfactorily demonstrated to the Board that the applicant has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of the applicant's patients or the public or a substantial risk of further criminal violations.

(2) HAS BEEN CONVICTED OF, ENTERED A PLEA OF GUILTY TO, OR ADJUDICATED DELINQUENT OF A CRIME FOR WHICH THE APPLICANT HAS BEEN REQUIRED TO REGISTER UNDER PENNSYLVANIA'S MEGAN'S LAW (42 PA.C.S. §§9791 - 9795.1) WITHOUT REGARD TO THE TIME ELAPSED SINCE THE DATE OF THE CONVICTION, PLEA OR ADJUDICATION OR THE LENGTH OF THE REGISTRATION REQUIRED UNDER MEGAN'S LAW. AS USED IN THIS PARAGRAPH THE TERM "CONVICTED" SHALL INCLUDE A JUDGMENT, AN ADMISSION OF GUILT OR PLEA OF NOLO CONTENDRE.

(3) HAS FAILED TO SATISFY THE BOARD THAT THE APPLICANT IS OF GOOD MORAL CHARACTER.

§ 18.524. Criteria for certification LICENSURE as behavior specialist.

(a) As required under section 635.2(g)(2)(ii) of the Insurance Company Act of 1921 (40 P.S. § 764h(g)(2)(ii)), an AN applicant for certification LICENSURE as a behavior specialist SHALL SATISFY THE BOARD THAT THE APPLICANT IS OF GOOD MORAL CHARACTER AND shall have received a master's or higher degree from a board-approved, accredited college

or university, including a major course of study in school, clinical, DEVELOPMENTAL or counseling psychology; special education; social work; speech therapy; occupational therapy; PROFESSIONAL COUNSELING; BEHAVIORAL ANALYSIS; NURSING; or another related field.

(b) As required under section 635.2(g)(2)(iii) of the Insurance Company Act of 1921, an AN applicant for certification LICENSURE as a behavior specialist shall have at least 1 year of experience involving functional behavior assessments OF INDIVIDUALS UNDER 21 YEARS OF AGE, including the development and implementation of behavioral supports or treatment plans.

(c) As required under section 635.2(g)(2)(iv) of the Insurance Company Act of 1921, an AN applicant for certification LICENSURE as a behavior specialist shall have completed at least 1,000 hours in direct OF IN-PERSON clinical experience with individuals with behavioral challenges or at least 1,000 hours of experience in a related field with individuals with autism spectrum disorders.

(d) (1) As required under section 635.2(g)(2)(v) of The Insurance Company Act of 1921, an AN applicant for certification LICENSURE as a behavior specialist shall have completed relevant training programs, including professional ethics, autism specific training, assessments training, instructional strategies and best practices, crisis intervention, comorbidity and medications, family collaboration, and addressing specific skill deficits training 90 HOURS OF COURSE WORK IN EVIDENCE-BASED PRACTICES FROM AN ACCREDITED COLLEGE OR UNIVERSITY, OR TRAINING APPROVED BY THE BACB OR THE BAS AS FOLLOWS:

(i) 3 HOURS OF PROFESSIONAL ETHICS APPROVED BY THE BAS.

- (ii) 18 HOURS OF AUTISM-SPECIFIC COURSEWORK OR TRAINING.
 - (iii) 16 HOURS OF ASSESSMENTS COURSEWORK OR TRAINING.
 - (iv) 16 HOURS OF INSTRUCTIONAL STRATEGIES AND BEST PRACTICES.
 - (v) 8 HOURS OF CRISIS INTERVENTION.
 - (vi) 8 HOURS OF CO-MORBIDITY AND MEDICATIONS.
 - (vii) 5 HOURS OF FAMILY COLLABORATION.
 - (viii) 16 HOURS OF ADDRESSING SPECIFIC SKILL DEFICITS TRAINING.
- (2) COURSEWORK UNDER THIS SECTION MAY BE ATTENDED FACE-TO-FACE INSTRUCTOR-LED OR ONLINE DISTANCE EDUCATION, AND MAY INCLUDE:
- (i) HOURS COMPLETED DURING A MASTER’S DEGREE, POST-MASTER’S CERTIFICATE OR HIGHER PROGRAM, AS NOTED IN A COURSE SYLLABUS.
 - (ii) BACB CONTINUING EDUCATION CREDITS.
 - (iii) BAS-APPROVED TRAINING WITH ASSOCIATED TESTS AND CORRESPONDING COURSE EVALUATIONS.

§ 18.525. Renewal of ~~certification~~ LICENSURE as behavior specialist.

- (a) A ~~certification~~ LICENSE issued under this subchapter expires on December 31 of the even-numbered year unless renewed for the next biennium.
- (b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last address on file with the Board.

(c) To retain ~~certification~~ LICENSURE as a behavior specialist, the ~~certificate holder~~ LICENSEE shall renew ~~certification~~ THE LICENSE in the manner prescribed by the Board and pay the required biennial renewal fee specified in § 16.13(~~k~~) (I) (relating to licensure, certification, examination and registration fees) prior to the expiration of the current biennium.

(d) To renew ~~certification~~ LICENSURE as a behavior specialist, the ~~certificate holder~~ LICENSEE shall apply on forms ~~supplied~~ MADE AVAILABLE by the Board, fully answer all questions, and pay the current renewal fee specified in § 16.13(~~k~~) (I).

§ 18.526. Inactive status of ~~certification~~ LICENSURE as behavior specialist.

(a) ~~Certification~~ LICENSURE as a behavior specialist will become inactive upon either of the following:

(1) The ~~certificate holder~~ LICENSEE in writing affirmatively requests the Board to place ~~certification~~ THE LICENSE on inactive status. Written confirmation of inactive status will be forwarded to the ~~certificate holder~~ LICENSEE.

(2) The ~~certificate holder~~ LICENSEE fails to renew the ~~certificate~~ LICENSE by the expiration of the renewal period.

(b) ~~Unless reactivated retroactively as provided for in this section, a person previously certified as a behavior specialist is not considered to be a certificate holder during any period when the certification was inactive.~~

(e) In order to reactivate an inactive ~~certification~~ LICENSE, the ~~certificate holder~~ LICENSEE shall apply on forms ~~supplied~~ MADE AVAILABLE by the Board, answer all questions fully, and pay the current renewal fee, if not previously paid, and the reactivation application fee specified in § 16.13(~~k~~) (I) (relating to licensure, certification, examination and registration fees).

~~(d) A certificate holder may reactivate an expired certification retroactive to the beginning of the current or a previous biennial renewal period by complying with subsection (c) and paying the renewal fee for each previous biennial renewal period and a late fee of \$5 per month for each month or part of month that the certificate was expired subsequent to the retroactive effective date of reactivation.~~

§ 18.527. Disciplinary action for certified LICENSED behavior specialist.

Under section 635.2(g)(1) of The Insurance Company Act of 1921 (40 P.S. § 764h(g)(1)), a ~~certificate holder~~ LICENSED BEHAVIOR SPECIALIST is subject to all disciplinary provisions applicable to medical doctors as set forth in the act. Following a final determination subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure), the Board may impose any of the corrective actions of section 42 of the act (63 P.S. § 422.42) upon a certified LICENSED behavior specialist who commits any act for which the Board would be authorized to take disciplinary action against a medical doctor under section 41 of the act (63 P.S. § 422.41), including unprofessional or immoral conduct as defined in § 16.61 (relating to unprofessional and immoral conduct).

Public Commentators on 16A-4929: Behavior Specialist Act 62.

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STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

Behavior Specialist

The State Board of Medicine (Board) proposes to amend §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and to add §§ 18.521—18.527 (relating to behavior specialists), 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 8 and 25 of the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.8 and 422.25) and under section 635.2(g) of The Insurance Company Law of 1921 (Insurance Law) (40 P. S. § 764h(g)).

Background and Need for the Amendment

Section 3 of the act of July 9, 2008 (P. L. 885, No. 62) amended the Insurance Law to provide for autism spectrum disorders coverage. In general, an insurer is required to provide covered individuals under 21 years of age coverage for the diagnostic assessment and treatment of autism spectrum disorders. An insurer shall contract with and accept as a participating provider any autism service provider that is licensed or certified in this Commonwealth. Section 635.2(g)(1) of the Insurance Law requires the Board, in consultation with the Department of Public Welfare, to promulgate regulations to provide for licensure or certification of behavior specialists. Section 635.2(f)(4) of the Insurance Law defines "behavior specialist" as "an individual who designs, implements or evaluates a behavior modification intervention component of a treatment plan, including those based on applied behavior analysis, to produce socially significant improvements in human behavior or to prevent loss of attained skill or function, through skill acquisition and the reduction of problematic behavior." This proposed rulemaking would implement certification of behavior specialists under the Insurance Law as amended.

Description of the Proposed Amendments

The Board's regulation in § 16.11(b) identifies those nonmedical doctor licenses and certificates that the Board issues, and in § 16.11(c) identifies those registrations that the Board issues. The proposed rulemaking would first add to § 16.11(b) certification as behavior specialist and add to § 16.11(c) biennial registration of behavior specialist certification. The proposed rulemaking would also add § 16.13(k) to set forth the fees associated with behavior specialist certification to be charged by the Board. To recover the costs of processing those applications, the fee for initial application for certification as behavior specialist and for reactivation of a previously-issued behavior specialist certification would each be \$70. To provide for an appropriate share of the general costs of operating the Board, the renewal fee for a behavior specialist would be \$75.

The proposed rulemaking would add Subchapter I. Proposed § 18.521 (relating to purpose) would identify the purpose of the subchapter as providing for the

certification of behavior specialists. Proposed § 18.522 (relating to definitions) would provide the statutory definitions of "applied behavioral analysis," "autism spectrum disorders," "behavior specialist," and "diagnostic assessment of autism spectrum disorders" as used in the subchapter.

Proposed § 18.523 (relating to application for certification as behavior specialist) would address the application for certification as a behavior specialist. Under proposed § 18.523(a), an applicant shall submit a completed application form, including any necessary supporting documents, and pay the required application fee. Section 635.2(g)(2) of the Insurance Law sets five criteria for certification as a behavior specialist, and as discussed within this preamble, these are identified in proposed § 18.524 (relating to criteria for certification as behavior specialist). Accordingly, proposed § 18.523(b) provides that the Board will certify as a behavior specialist an applicant who demonstrates that the applicant satisfies the requirements of section 635.2(g)(2) of the Insurance Law for certification as a behavior specialist as set forth in § 18.524. Because as discussed within this preamble the Board is also setting forth in its proposed rulemaking grounds for disciplinary action in proposed § 18.527 (relating to disciplinary action for behavior specialist), proposed § 18.523(c) provides that the Board may deny an application for certification as behavior specialist upon those grounds for disciplinary action. Also, section 635.2(g)(3) of the Insurance Law prohibits the Board from certifying an applicant who has been convicted of a drug felony unless it has been at least 10 years, the applicant has demonstrated significant progress in personal rehabilitation since the conviction that certification should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations, and the applicant otherwise satisfies the requirements for certification. Accordingly, proposed § 18.523(d) provides that the Board will not grant certification unless these requirements have been met.

The five criteria for certification as a behavior specialist set forth in section 635.2(g)(2) of the Insurance Law are: good moral character; receipt of a master's or higher degree in school, clinical or counseling psychology, special education, social work, speech therapy, occupational therapy or another related field; at least 1 year of experience involving functional behavior assessments, including development and implementation of behavioral supports or treatment plans; at least 1,000 hours in direct clinical experience with individuals with behavioral challenges or at least 1,000 hours experience in a related field with individuals with autism spectrum disorders; and completion of relevant training programs, including professional ethics, autism-specific training, assessments training, instructional strategies and best practices, crisis intervention, comorbidity and medications, family collaboration and addressing specific skill deficits training. Accordingly, proposed § 18.524 recites these criteria (other than good moral character) in subsections (a)—(d).

Because all licenses and certifications issued by the Board within the Bureau of Professional and Occupational Affairs expire after 2 years and must be renewed biennially, proposed § 18.525 (relating to renewal of certification as behavior specialist) addresses renewal of certification as behavior specialist. Proposed § 18.525(a) provides that all behavior specialist certifications expire December 31 of each even-numbered year, the expiration date for all other licenses and certifications issued by the Board. Proposed § 18.525(b) provides that the Board will

forward to the certificateholder's last known address on file with the Board those biennial renewal forms and other forms and literature that are to be distributed to certificateholders. In addition to paper applications for renewal, the Board now permits online renewal for its existing Board-regulated practitioners. Under proposed § 18.525(c), a certificateholder must renew the certification in the manner provided by the Board, that is either online or by paper application, and pay the required renewal fee by the expiration date to renew the certification. As part of that renewal process, proposed § 18.525(d) requires the certificateholder to fully answer all questions and pay the required fee.

Proposed § 18.526 (relating to inactive status of certification as behavior specialist) addresses inactive status of behavior specialist certification. Proposed § 18.526(a) provides that certification may become inactive either by the certificateholder's request or by expiration at the end of the biennial renewal period. To minimize the opportunity or consequence of a certificate being incorrectly placed on inactive status at what appears to be the request of the certificateholder, proposed § 18.526(a)(1) provides that the Board will provide written notice to the certificateholder. Proposed § 18.526(c) provides the general requirement for reactivation of an inactive certification as behavior specialist that the certificate holder must apply on forms supplied by the Board, answer all questions fully, and pay the required fee. Throughout the Bureau of Professional and Occupational Affairs, whenever a license has expired and has not yet been reactivated, the holder may not continue to practice until the license is reactivated prospectively. This rulemaking breaks with that practice for behavior specialists. The purpose of amending the Insurance Law to provide for behavior specialists was to increase the availability of diagnostic assessment and treatment of autism spectrum disorders by providing that insurance companies must pay for those services when provided by licensed or certified persons. The Insurance Law has no prohibition on practice as a behavior specialist by one not certified by the Board. Accordingly, proposed § 18.526(b) provides only that a behavior specialist whose certificate is inactive is not considered to be a certificate holder unless the certificate has been reactivated retroactively. The obvious consequence is that an insurance company need not reimburse the behavior specialist for services provided during the period that the certificate was inactive. However, because the purpose is to increase the availability of services by allowing behavior specialists to be paid by insurance companies, the Board proposes to permit a behavior specialist to retroactively reactivate certification as provided in proposed § 18.526(d). Under that proposed section, in addition to the requirements of subsection (c), the behavior specialist must pay the renewal fee for past renewal periods and a late fee of \$5 per month. This late fee is the standard late renewal fee of section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225).

Finally, proposed § 18.527 (relating to disciplinary action for certified behavior specialist) addresses disciplinary action. Section 635.2(g)(1) of the Insurance Law provides that a certified behavior specialist is subject to all disciplinary provisions applicable to medical doctors under the act. Section 41 of the act (63 P. S. § 422.41) authorizes the Board to take disciplinary action against a medical doctor based upon any of a list of grounds, including unprofessional conduct. In § 16.61 (relating to unprofessional conduct), the Board has previously set forth examples of "unprofessional conduct" for which disciplinary action may be taken against a medical doctor.

Accordingly, proposed § 18.527 provides that the Board may impose any corrective action of section 42 of the act (63 P. S. § 422.42) upon a certified behavior specialist who has committed any act for which the Board would be authorized to take disciplinary action against a medical doctor under section 41 of the act.

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 February 2, 2010, 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-form 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, P. O. Box 2649, Harrisburg, PA 17105-2649, or e-mail st-medicine@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4929 (behavior specialist), when submitting comments.

OLLICE BATES, Jr., M.D.,
Chairperson

Fiscal Note: 16A-4929. 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 16. STATE BOARD OF MEDICINE— GENERAL PROVISIONS

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

* * * * *

(b) The following nonmedical doctor licenses and certificates are issued by the Board:

* * * * *

(6) Certification as behavior specialist.

(c) The following registrations are issued by the Board:

* * * * *

(12) Biennial registration of a behavior specialist certification.

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(k) Behavior Specialist Certification:

Application for certification as behavior specialist.....	\$ 70
Biennial renewal of behavior specialist certification.....	\$ 75
Application for reactivation of behavior specialist certification.....	\$ 70

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

(Editor's Note: The following subchapter is new and has been printed in regular type to enhance readability.)

Subchapter I. BEHAVIOR SPECIALISTS

§ 18.521. Purpose.

This subchapter implements section 635.2(g) of The Insurance Company Law of 1921 (40 P. S. § 764h(g)), as amended by section 3 of the act of July 9, 2008 (P. L. 885, No. 62) to provide for the certification of behavior specialists.

§ 18.522. Definitions.

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

Applied behavioral analysis—As defined in section 635.2(f)(1) of The Insurance Company Law of 1921 (40 P. S. § 764h(f)(1)), the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function, including the use of direct observation, measurement and functional analysis of the relations between environment and behavior.

Autism spectrum disorders—As defined in section 635.2(f)(3) of The Insurance Company Law of 1921, any of the pervasive developmental disorders defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), or its successor, including autistic disorder, Asperger's disorder and pervasive developmental disorder not otherwise specified.

Behavior specialist—As defined in section 635.2(f)(4) of The Insurance Company Law of 1921, an individual who designs, implements or evaluates a behavior modification intervention component of a treatment plan, including those based on applied behavioral analysis, to produce socially significant improvements in human behavior or to prevent loss of attained skill or function, through skill acquisition and the reduction of problematic behavior.

Diagnostic assessment of autism spectrum disorders—As defined in section 635.2(f)(5) of The Insurance Company Law of 1921, medically necessary assessments,

evaluations or tests performed by a licensed physician, licensed physician assistant, licensed psychologist or certified registered nurse practitioner to diagnose whether an individual has an autism spectrum disorder.

§ 18.523. Application for certification as behavior specialist.

(a) An applicant for certification as a behavior specialist shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, for certification as a behavior specialist and pay the fee in § 16.13(k) (relating to licensure, certification, examination and registration fees) for application for certification as behavior specialist.

(b) Except as otherwise provided in subsections (c) and (d), the Board will certify as a behavior specialist an applicant who demonstrates that the applicant satisfies the requirements of section 635.2(g)(2) of The Insurance Company Act of 1921 (40 P. S. § 764h(g)(2)) for registration as a behavior specialist, as provided in § 18.524 (relating to criteria for certification as behavior specialist), and otherwise complies with this subchapter.

(c) The Board may deny an application for certification as a behavior specialist upon the grounds for disciplinary action as set forth in § 18.527 (relating to disciplinary action for certified behavior specialist).

(d) The Board will not grant an application for certification as a behavior specialist of an applicant who has been convicted of a felony offense as provided in section 635.2(g)(3) of The Insurance Company Act of 1921, unless at least 10 years have elapsed from the date of conviction and the applicant has satisfactorily demonstrated to the Board that the applicant has made significant progress in personal rehabilitation since the conviction that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of the applicant's patients or the public or a substantial risk of further criminal violations.

§ 18.524. Criteria for certification as behavior specialist.

(a) As required under section 635.2(g)(2)(ii) of The Insurance Company Act of 1921 (40 P. S. § 764h(g)(2)(ii)), an applicant for certification as a behavior specialist shall have received a master's or higher degree from a Board-approved, accredited college or university, including a major course of study in school, clinical or counseling psychology, special education, social work, speech therapy, occupational therapy or another related field.

(b) As required under section 635.2(g)(2)(iii) of The Insurance Company Act of 1921, an applicant for certification as a behavior specialist shall have at least 1 year of experience involving functional behavior assessments, including the development and implementation of behavioral supports or treatment plans.

(c) As required under section 635.2(g)(2)(iv) of The Insurance Company Act of 1921, an applicant for certification as a behavior specialist shall have completed at least 1,000 hours in direct clinical experience with individuals with behavioral challenges or at least 1,000 hours of experience in a related field with individuals with autism spectrum disorders.

(d) As required under section 635.2(g)(2)(v) of The Insurance Company Act of 1921, an applicant for certification as a behavior specialist shall have completed relevant training programs, including professional ethics, autism-specific training, assessments training, instructional strategies and best practices, crisis intervention,

comorbidity and medications, family collaboration, and addressing specific skill deficits training.

§ 18.525. Renewal of certification as behavior specialist.

(a) A certification issued under this subchapter expires on December 31 of the even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last address on file with the Board.

(c) To retain certification as a behavior specialist, the certificateholder shall renew certification in the manner prescribed by the Board and pay the required biennial renewal fee specified in § 16.13(k) (relating to licensure, certification, examination and registration fees) prior to the expiration of the current biennium.

(d) To renew certification as a behavior specialist, the certificateholder shall apply on forms supplied by the Board, fully answer all questions, and pay the current renewal fee specified in § 16.13(k).

§ 18.526. Inactive status of certification as behavior specialist.

(a) Certification as a behavior specialist will become inactive upon either of the following:

(1) The certificateholder in writing affirmatively requests the Board to place certification on inactive status. Written confirmation of inactive status will be forwarded to the certificate holder.

(2) The certificateholder fails to renew the certificate by the expiration of the renewal period.

(b) Unless reactivated retroactively as provided for in this section, a person previously certified as a behavior

specialist is not considered to be a certificateholder during any period when the certification was inactive.

(c) To reactivate an inactive certification, the certificateholder shall apply on forms supplied by the Board, answer all questions fully, and pay the current renewal fee, if not previously paid, and the reactivation application fee specified in § 16.13(k) (relating to licensure, certification, examination and registration fees).

(d) A certificateholder may reactivate an expired certification retroactive to the beginning of the current or a previous biennial renewal period by complying with subsection (c) and paying the renewal fee for each previous biennial renewal period and a late fee of \$5 per month for each month or part of month that the certificate was expired subsequent to the retroactive effective date of reactivation.

§ 18.527. Disciplinary action for certified behavior specialist.

Under section 635.2(g)(1) of The Insurance Company Act of 1921 (40 P. S. § 764h(g)(1)), a certificateholder is subject to all disciplinary provisions applicable to medical doctors as set forth in the act. Following a final determination subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure), the Board may impose any of the corrective actions of section 42 of the act (63 P. S. § 422.42) upon a certified behavior specialist who commits any act for which the Board would be authorized to take disciplinary action against a medical doctor under section 41 of the act (63 P. S. § 422.41), including unprofessional or immoral conduct as defined in § 16.61 (relating to unprofessional and immoral conduct).

[Pa.B. Doc. No. 10-278. Filed for public inspection February 12, 2010, 9:00 a.m.]



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

April 11, 2011

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Medicine
16A-4929: General License, Certification and Registration Provisions;
Practitioners Other than Doctors – Behavior Specialists

Dear Chairman Lutkewitte:

Enclosed is a copy of a final rulemaking package of the State Board of Medicine pertaining to General License, Certification and Registration Provisions; Practitioners Other than Doctors – Behavior Specialists

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 cursive script that reads "Carol E. Rose".

Carol E. Rose, M.D., Chairperson
State Board of Medicine

CER/DMG:pah

Enclosure

cc: Thomas J. Weaver, Acting Commissioner
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
David M. Green, Counsel
State Board of Medicine
State Board of Medicine

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

I.D. NUMBER: 16A-4929

SUBJECT: GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS;
PRACTITIONERS OTHER THAN MEDICAL DOCTORS – BEHAVIOR SPECIALISTS

AGENCY: DEPARTMENT OF STATE
STATE BOARD OF MEDICINE

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

**RECEIVED
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2011 APR 11 A 10:17**

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
4/11/11	<i>Michele Warren</i>	MAJORITY CHAIRMAN <u>Julie Harhart</u>
4/11/11	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <u>Robert M. Tomlinson</u>
4/11/11	<i>K. Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)