

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, State Board of Chiropractic

(2) Agency Number: **16A**

Identification Number:

4315

IRRC Number:

2826

2019 MAR 11 AM 10:27
INDEPENDENT REGULATORY
REVIEW COMMISSION

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(3) Short Title:

Review of chiropractic treatment

(4) PA Code Cite:

49 Pa. Code §§ 5.55, 5.56

(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-chiropractic@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)

Chiropractors often review the treatment of another chiropractor, such as for workers' compensation or motor vehicle accident purposes. The proposed rulemaking will set forth standards for a licensed chiropractor to follow in conducting independent chiropractic examinations or chiropractic peer reviews.

(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.

The rulemaking is adopted under section 302(3) of the Chiropractic Practice Act (63 P.S. § 625.302(3)).

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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 provision of chiropractic treatment is often reviewed by another chiropractor, or a patient receiving chiropractic treatment is often examined by another chiropractor, both typically at the request of an insurance company paying for the treatment. However, there are minimal recognized standards for the necessary qualifications of the reviewer and the required performance of the review. As a result, there is little assurance that the reviews are consistently of sufficient quality. The proposed rulemaking would provide more clarity and certainty to the regulated community.

(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?

Those licensed chiropractors who perform reviews may be adversely affected by the proposed rulemaking, by being required to comply with those standards. The Board has not identified any other 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 perform reviews. There are approximately 4,150 currently licensed chiropractors.

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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.

Those members of the regulated community who perform reviews may have some cost associated with compliance with the proposed rulemaking. There are no other costs or savings to members of the regulated community associated with compliance with the rulemaking.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or 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:						
Regulated Community						
Local Government						

Regulatory Analysis Form

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 06-07) actual	FY -2 (FY 07-08) actual	FY -1 (FY 08-09) projected	Current FY (FY 09-10) budgeted
Pa. State Board of Chiropractic	\$386,836	\$397,552	\$538,000	\$565,000

(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.

At its regular meetings from September, 2006, through May, 2007, the Board discussed this proposed rulemaking. On June 5, 2007, the Board provided an exposure draft of the proposed rulemaking to and solicited input from 17 interested parties who had attended meetings of the Board or expressed an interest in Board rulemaking or in this particular rulemaking. The Board received comments from Patrick J. Kelly, DC, on behalf of the Pennsylvania Chiropractic Association; Michael D. Miscoe, DC, of Practice Masters, Inc.; and Wesley S. Mullen, Jr., DC. The Board incorporated many of these comments into its proposed rulemaking, which was also discussed in public session during the Board's meetings in July and September, 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?

New Jersey has standards for a licensed chiropractor performing a patient record review and performing an independent chiropractic examination; this proposed rulemaking is based in large measure on the New Jersey requirements. Delaware requires a chiropractor who is providing an opinion as to eligibility for insurance reimbursement to be currently licensed and actively practicing at least 10 hours per week. Maryland, New York, Ohio, and West Virginia do not have specific standards for a chiropractor performing an independent examination or review of treatment.

The proposed rulemaking will 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.

Regulations of the Department of Labor & Industry at 34 Pa. Code §§ 127.401-127.670 (relating to medical treatment review) address certain requirements for obtaining legal review of medical treatment. The standards of this proposed rulemaking are consistent with the L&I regulations and should not affect those regulations. This proposed rulemaking will not affect any other regulations of the Board or other state agencies.

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

This proposed rulemaking would not require any additional recordkeeping or other paperwork.

(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.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

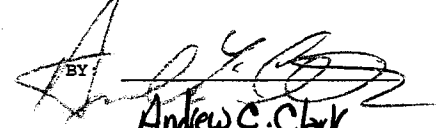
Copy below is hereby approved as to
form and legality. Attorney General

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

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form and legality.
Executive or Independent
Agencies.



State Board of Chiropractic
(AGENCY)



BY: _____
(DEPUTY ATTORNEY GENERAL)

BY: _____
Andrew C. Clark
JAN 28 2010
DATE OF APPROVAL


MAR 02 2010

DOCUMENT/FISCAL NOTE NO. 16A-4315

DATE OF APPROVAL

DATE OF ADOPTION:

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

BY: 
Kathleen G. McConnell, DC

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.

PROPOSED RULEMAKING

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

49 Pa. Code §§ 5.55, 5.56
REVIEW OF CHIROPRACTIC TREATMENT

The State Board of Chiropractic (Board) proposes to amend its regulations to add §§ 5.55 and 5.56 (relating to independent chiropractic examination; chiropractic peer review), 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

Section 302(3) of the Chiropractic Practice Act (act) (63 P.S. § 625.302(3)) authorizes the Board to promulgate, adopt and enforce rules and regulations necessary to carry out the act.

Background and Need for the Amendment

Chiropractors often review the treatment of another chiropractor or independently examine a chiropractic patient, such as for workers' compensation or motor vehicle accident purposes. The proposed rulemaking will set forth standards for a licensed chiropractor to follow in those situations.

Description of the Proposed Amendments

Proposed § 5.55 – independent chiropractic examination.

The proposed rulemaking would first address independent chiropractic examinations. Proposed § 5.55(a) would set the basic qualifications by requiring that a chiropractor performing an independent chiropractic examination be currently licensed in Pennsylvania, actively practice at least 20 hours a week, and have professional liability insurance that covers independent chiropractic examinations. Proposed § 5.55(b) would provide that a chiropractor may not perform an independent chiropractic examination if the chiropractor has previous professional involvement with the patient or chiropractor under review, has performed or provided precertification or other professional services in the same matter, or the chiropractor's impartiality may reasonably be questioned.

Proposed § 5.55(c) would require a chiropractor performing an independent examination to obtain and review the patient record of the treating chiropractor. Proposed § 5.55(d) would require a chiropractor performing an independent examination to take a history and perform a clinical examination of the patient and to complete a patient record. Proposed § 5.55(e) would require a chiropractor performing an independent chiropractic examination to prepare, review and sign a report of the examination. This report would include a description of records reviewed, a recital of history and examination findings, discussion of tests and the basis for conducting the test, review of the patient's response to prior care and treatment, and other facts supporting the opinion, and the clinical rationale for any opinion. Proposed § 5.55(f) would require a chiropractor performing an independent examination to provide a copy of the report to the treating chiropractor. Proposed § 5.55(g) would prohibit a chiropractor performing an independent examination from recommending to the patient any alteration in care or soliciting the patient for care.

Finally, proposed § 5.55(h) would define the term “independent chiropractic examination” to include a chiropractic examination of a workers’ compensation claimant at the request of the employer and a chiropractic examination of a person injured in a motor vehicle accident upon court order.

Proposed § 5.56 – chiropractic peer review.

The proposed rulemaking would also address chiropractic peer review. Proposed § 5.56(a) would set the basic qualifications by requiring that a chiropractor performing a chiropractic peer review be currently licensed in Pennsylvania, actively practice at least 20 hours a week, hold an adjunctive procedures certificate if the review addresses adjunctive procedures, and have professional liability insurance that covers chiropractic peer review. Proposed § 5.56(b) would provide that a chiropractor may not perform a chiropractic peer review if the chiropractor had previous professional involvement with the patient or chiropractor under review, has performed or provided precertification or other professional services in the same matter, or the chiropractor’s impartiality may reasonably be questioned.

Proposed § 5.55(c) would require a chiropractor performing a peer review to prepare, review and sign a report of the peer review. This report would include a description of records reviewed, a review of the patient’s response to prior care and treatment, and other facts supporting the opinion, and the clinical rationale for any opinion. Proposed § 5.56(d) would require a chiropractor performing a peer review to provide a copy of the report to the treating chiropractor.

Finally, proposed § 5.56(e) would define the term “chiropractic peer review” to include a utilization review or peer review of chiropractic treatment of a workers’ compensation claimant and a peer review of chiropractic treatment of a person injured in a motor vehicle accident.

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 March 11, 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 publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, by mail at P.O. Box 2649, Harrisburg, PA 17105-2649, or by email at st-chiropractic@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-4315 (review of chiropractic treatment), when submitting comments.

Kathleen G. McConnell, DC
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 13. STATE BOARD OF CHIROPRACTIC

* * *

Subchapter E. MINIMUM STANDARDS OF PRACTICE

* * *

§ 5.55. Independent chiropractic examination.

(a) A chiropractor performing an independent chiropractic examination in this

Commonwealth shall:

(1) Hold a current valid license to practice chiropractic in this Commonwealth.

(2) Be currently engaged in the clinical practice of chiropractic in this

Commonwealth at least 20 hours per week.

(3) Have professional liability insurance that covers independent chiropractic examinations.

(b) A chiropractor may not perform an independent chiropractic examination if:

(1) The chiropractor had previous professional involvement with the patient or provider under review.

(2) The chiropractor has performed or provided precertification, case management, vocational rehabilitation or any other services in the same matter.

(3) The chiropractor's impartiality may reasonably be questioned.

(c) A chiropractor performing an independent chiropractic examination shall obtain and review the patient record of the currently treating chiropractor.

(d) A chiropractor performing an independent chiropractic examination shall take the patient's history and perform a clinical examination and complete a patient record as required by § 5.51 (relating to patient records).

(e) A chiropractor performing an independent chiropractic examination shall prepare, review and sign a report, containing at a minimum the following:

(1) The nature and extent of all records reviewed, including other information presented, such as test results.

(2) A recital of the history, clinical examination and findings.

(3) All tests performed, including the basis for conducting each test and the results.

(4) A review of the patient's response to prior care and treatment.

(5) All other facts upon which any opinion is based, together with the source of those facts.

(6) The clinical rationale for any opinion expressed with respect to the patient's current condition.

(f) A chiropractor performing an independent chiropractic examination shall provide a copy of the signed report to the chiropractor currently providing chiropractic care to the patient.

(g) A chiropractor performing an independent chiropractic examination may not:

(1) Make any recommendations directly to the patient for alterations in care.

(2) Solicit the patient for care.

(h) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Independent chiropractic examination – A chiropractic examination and evaluation performed by a chiropractor other than a chiropractor currently providing the patient with chiropractic care and to be used for the purpose of determining the patient’s current chiropractic condition and prognosis. The term “independent chiropractic examination” includes examination by a chiropractor under section 314 of the Workers’ Compensation Act (77 P.S. § 651) or under section 1796 of the Vehicle Code (75 Pa.C.S. § 1796).

§ 5.56. Chiropractic peer review.

(a) A chiropractor performing a chiropractic peer review in this Commonwealth shall:

(1) Currently hold a valid license to practice chiropractic in this Commonwealth.

(2) Be currently engaged in the active practice of chiropractic, in the chiropractic specialty of the chiropractic treatment under review, if any, in this Commonwealth at least 20 hours per week.

(3) Currently hold a valid adjunctive procedures certificate issued by the Board, if the review addresses adjunctive procedures.

(4) Have professional liability insurance that covers chiropractic peer reviews.

(b) A chiropractor may not perform a chiropractic peer review if:

(1) The chiropractor had previous professional involvement with the patient or provider under review.

(2) The chiropractor has performed or provided precertification, case management, vocational rehabilitation or any other services in the same matter.

(3) The chiropractor’s impartiality may reasonably be questioned.

(c) A chiropractor performing a chiropractic peer review shall prepare, review and sign a report, containing at a minimum the following:

(1) The nature and extent of all records reviewed, including other information presented, such as test results.

(2) A review of the patient's response to prior care and treatment.

(3) All other facts upon which any opinion is based, together with the source of those facts.

(4) The clinical rationale for any opinion expressed with respect to the patient's prognosis and need for chiropractic care.

(d) A chiropractor performing a chiropractic peer review shall provide a copy of the signed report to the chiropractor currently providing chiropractic care to the patient.

(e) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Chiropractic peer review – A review and evaluation of chiropractic patient records performed by a chiropractor other than a chiropractor currently providing the patient with chiropractic care and to be used for the purpose of determining the appropriateness of continued chiropractic care. The term “chiropractic peer review” includes utilization review under section 306(f.1)(6) of the Workers’ Compensation Act (77 P.S. § 531(6)) and includes peer review under section 420 of the Workers’ Compensation Act (77 P.S. §§ 831, 832) or under section 1797(b) of the Vehicle Code (75 Pa.C.S. § 1797(b)).

COMMENTATOR'S LIST
Reg. 16A-4315

Michael D. Miscoe BS, CPC, CHCC, CRA
Practice Master Inc.
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Central City, PA 15926

Patrick Kelly, DC, President
PA Chiropractic Assoc.
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Harrisburg, PA 17102

Wesley S. Mullen, Jr., DC
34 North Mountain Blvd
Mountaintop, PA 18707



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF CHIROPRACTIC
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7155

March 11, 2010

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
16A-4315:REVIEW OF CHIROPRACTIC TREATMENT

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Chiropractic pertaining to Review of Chiropractic Treatment.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen G. McConnell".

Kathleen G. McConnell, DC, Chairperson
State Board of Chiropractic

KGM/TAB:rs

Enclosure

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

