

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency
Department of State, Bureau of Professional and Occupational Affairs, State Board of Chiropractic

(2) Agency Number: 16A
Identification Number: 4323

IRRC Number: 3068

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(3) PA Code Cite:
49 Pa. Code § 5.79

(4) Short Title:
Distance education

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

Primary Contact: **Thomas Blackburn, Regulatory Unit Counsel, Department of State;**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; tblackburn@pa.gov
Secondary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; cymontgome@pa.gov

(6) 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

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

This rulemaking proposes to amend the continuing education regulations (49 Pa. Code §§ 5.71-5.78) of the State Board of Chiropractic (Board) to limit a licensee to meeting no more than 50% of the continuing education requirement through distance education.

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

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

(9) 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 rulemaking is not mandated by any Federal or State law or court order or Federal regulation.

(10) 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.

Section 507(a) of the act (63 P.S. § 625.507(a)) requires each licensed chiropractor to complete at least 24 hours of continuing chiropractic education within the immediately preceding 2-year period as a condition of biennial license renewal. Section 507(b) provides permitted and prohibited subject matter and requires that the programs be approved by the Board. The balance of section 507 of the act and Subchapter G (relating to continuing education) lay out various requirements for licensees and providers to follow. Without explicitly saying so, the tenor of these requirements suggests that all continuing education must be in the traditional classroom lecture or clinical presentation. Yet, much useful education can be delivered through other methods such as real-time web-cast or internet presentation. To the extent the subject matter of the education requires hands-on participation, the Board would approve only those courses that are presented in person. While much other learning can occur through non-traditional methods such as prerecorded video, these tools present the opportunity for one so inclined to go through the formalities without actual participation. In this rulemaking, the Board proposes to clearly permit non-traditional methods of continuing education, yet limit the amount.

(11) 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 rulemaking is not more stringent and does not overlap or conflict with any Federal requirements.

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

Of the 24 hours of continuing education required for biennial renewal in Delaware, a chiropractor is limited to 6 hours in asynchronous education, including video replay or online courses. Maryland requires licensed chiropractors to complete 48 hours of continuing education during each biennial renewal period, but does not restrict its licensed chiropractors between live, home study or online format. Of the 30 hours of continuing education required for biennial renewal in New Jersey, a chiropractor is limited to 12 hours in asynchronous distance learning courses. In New York a licensed chiropractor must complete 36 hours of continuing education during each triennial renewal period, but may not count more than 12 hours in self-instructional coursework without live interactive instruction. Ohio requires licensed chiropractors to complete at least 36 hours of continuing education during each biennium, and those who practice in Ohio must complete at least 24 of the hours via in person approved courses in Ohio; there is no other restriction on online or electronic learning. Chiropractors in West Virginia must complete at least 18 hours of continuing education every year, including at least 12 hours in the classroom.

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

(13) 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.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Board's continuing education committee discussed the need for this rulemaking at a meeting open to the public immediately prior to the Board's regularly scheduled meeting on January 30, 2014. In public session at the Board meeting, the committee recommended proposing a rulemaking to limit the proportion of continuing education that can be met via online or other non-traditional methods, and the Board engaged in extensive discussion about the need for the rulemaking and the various methods to accomplish its objectives. Representatives of Pennsylvania Chiropractic Association, the professional society of which the Board's licensees are members, were present for this discussion and generally attend the Board's public meetings.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

All licensees of the Board would be affected by the proposed rulemaking. The Board currently licenses approximately 4,200 chiropractors. According to the Pennsylvania Department of Labor and Industry, in 2010 (the most recent year for which data is available) 51.2% of chiropractors in Pennsylvania were employed in offices of health care practitioners other than physicians, and 43.8% were self-employed; data for employment in scientific research and development services, offices of physicians, outpatient care centers, other ambulatory health care services and child daycare services is marked confidential.

Section 3 of the Regulatory Review Act provides that a small business is defined by the U.S. Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where chiropractors work, a healthcare office other than a physician office is a small business if it has \$7.0 million or less in total average annual receipts. Those who are self-employed are presumed to be a small business.

In considering all of these small business thresholds set by NAICS for the businesses in which chiropractor work, it is probable that the vast majority of licensees work in small businesses.

As noted in response to question (17), the proposed amendments impose no additional paperwork requirements or administrative burdens and require no additional investment in equipment. Accordingly, there should be no disproportionate impact upon small businesses as a result of compliance with the proposed rulemaking.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

See the response to question (15). All licensees of the Board will be required to comply with the rulemaking.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The Board does not expect this rulemaking to have any financial, economic or social impact on individuals, small businesses, businesses or labor communities or other public or private organizations.

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

The above-identified benefits of the rulemaking outweigh any cost or adverse effect.

(19) 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.

Because they will have to track the number of hours of continuing education in distance education, as well as total continuing education as currently required, licensees will have a *de minimis* increase in costs in order to comply with the rulemaking. There are no other costs or savings to the regulated community associated with compliance with the rulemaking.

(20) Provide a specific estimate of the costs and/or savings to the **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.

(21) Provide a specific estimate of the costs and/or savings to the **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.

In conducting its audits of licensees, the Board will track each audited licensee's amount of distance education as well as total continuing education as currently required and therefore have a small increase in costs. There are no other costs or savings to state government associated with implementation of the rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, 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 rulemaking would not require any additional recordkeeping or other paperwork for implementation.

(23) 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	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 (10-11)	FY -2 (11-12)	FY -1 (12-13)	Current FY (13-14)
Pa. State Bd. of Chiropractic	(actual) \$349,950	(actual) \$401,194	(actual) \$450,841	(budgeted) \$450,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The Board does not expect this rulemaking to have any adverse impact on small businesses. Except for the *de minimis* or otherwise very minor increase in costs described in the response to question (19), there will be no projected additional reporting, recordkeeping or other administrative costs required for compliance with the rulemaking. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the 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.

(26) 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.

The Board has not considered any alternative regulatory provisions.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Because it does not expect this rulemaking to have any adverse impact on small businesses, the Board did not conduct a regulatory flexibility analysis.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

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

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

- | | |
|---|--------------------------------|
| A. The date by which the agency must receive public comments: | <u>30 days after publ.</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>within 2 years of publ.</u> |
| D. The expected effective date of the final-form regulation: | <u>final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>effective date</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>effective date</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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 held the third Thursday of each odd-numbered month. More information can be found on the Board's website (linked as a health-related board from www.dos.state.pa.us/bpoa).

DOS Legal Counsel
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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:

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

BY: *Amy M. Elliott*
(DEPUTY ATTORNEY GENERAL)
JUL 10 2014

State Board of Chiropractic
(AGENCY)

[Signature]
BY

DOCUMENT/FISCAL NOTE NO. 16A-4323

DATE OF APPROVAL

JUN 25 2014
DATE OF APPROVAL

DATE OF ADOPTION:

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

BY: *[Signature]*
Kathleen E. McConnell, DC

Check if applicable
Copy not approved.
Objections attached.

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

PROPOSED RULEMAKING

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

49 Pa. Code § 5.79
DISTANCE EDUCATION

The State Board of Chiropractic (Board) proposes to add § 5.79 (relating to distance education) to read as set forth in Annex A.

Effective date

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

Statutory Authority

The amendments are authorized under section 302(3) of the Chiropractic Practice Act (act) (63 P.S. § 625.302(3)).

Background and Need for the Amendment

Section 507(a) of the act (63 P.S. § 625.507(a)) requires each licensed chiropractor to complete at least 24 hours of continuing chiropractic education within the immediately preceding 2-year period as a condition of biennial license renewal. Section 507(b) provides permitted and prohibited subject matter and requires that the programs be approved by the Board. The balance of section 507 of the act and Subchapter G (relating to continuing education) lay out various requirements for licensees and providers to follow. Without explicitly saying so, the tenor of these requirements suggests that all continuing education must be in the traditional classroom lecture or clinical presentation. Yet, much useful education can be delivered through other methods such as real-time web-cast or internet presentation. To the extent the subject matter of the education requires hands-on participation, the Board would approve only those courses that are presented in person. While much other learning can occur through non-traditional methods such as prerecorded video, these tools present the opportunity for one so inclined to go through the formalities without actual participation. In this rulemaking, the Board proposes to clearly permit non-traditional methods of continuing education, yet limit the amount.

Description of the Proposed Amendments

The proposed rulemaking would add new § 5.79 (relating to distance education). Subsection (a) would define “distance learning” as instruction delivered in an independent format or in an instructor-led format during which the participant and the instructor are separated by distance and time. This definition would explicitly exclude live, interactive webinars and online courses in which the participant and instructor are able to interact in real time. Subsection (b) would state the general rule that continuing education used to satisfy the requirements be obtained through traditional continuing education such as classroom lecture, clinical presentation, real-time web-cast or other live sessions where a presenter is involved. Subsection (c) would restrict licensees to obtaining no more than 50% of the required hours by distance learning.

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 July 21, 2014, 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 for the Department of State, State Board of Chiropractic by mail at P.O. Box 2649, Harrisburg, PA 17105-2649 or by email at RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-4323 (distance learning), when submitting comments.

Kathleen G. McConnell, DC
Chairperson
State Board of Chiropractic

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 G. CONTINUING EDUCATION

* * * * *

§ 5.79. Distance education.

(a) As used in this section, the term “distance education” means instruction delivered in an independent format or in an instructor-led format during which the participant and the instructor are separated by distance and time. The term does not include live, interactive webinars or online courses in which the participant and instructor are able to interact in real time.

(b) Except as provided in subsection (c), continuing education hours used to satisfy the requirement of section 507(a) of the act (63 P.S. § 625.507(a)) shall be obtained through traditional continuing education such as classroom lecture, clinical presentation, real-time web-cast or other live sessions where a presenter is involved.

(c) No more than 50% of the required number of continuing education hours may be obtained through distance education.

* * * * *



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

July 21, 2014

The Honorable John F. Mizner, Esq., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Chiropractic
16A-4323: DISTANCE EDUCATION

Dear Chairman Mizner:

Enclosed is a copy of a proposed rulemaking package of the State Board of Chiropractic pertaining to Distance Education.

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: Travis N. Gery, Esq., Commissioner
Professional and Occupational Affairs
Patricia Allan, Director of Policy, Department of State
Kevin Schmidt, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Sabina I. Howell, Counsel
State Board of Chiropractic
State Board of Chiropractic

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

I.D. NUMBER: 16A-4323
SUBJECT: Distance Education
AGENCY: DEPARTMENT OF STATE
 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
 STATE BOARD OF CHIROPRACTIC

TYPE OF REGULATION

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

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>		
7/21/14	<i>Michele Warren</i>	MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>		
2/21/14	<i>Mary Walmer</i>	MAJORITY CHAIR <u>Robt. M. Tomlinson</u>
		MINORITY CHAIR _____
<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>		
7/21/14	<i>Stef F. H.</i>	ATTORNEY GENERAL (for Final Omitted only)
<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>		
7-21-14	<i>Franklin Brown</i>	