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Regulatory Analysis Form

(Completed by Promulgating Agency)

(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: **4324**

IRRC Number: **3106.**

(3) PA Code Cite:
49 Pa. Code §§ 5.6, 5.63

(4) Short Title:
Radiological procedures examination

(5) Agency Contacts (List Telephone Number and Email Address):
 Primary Contact: **Thomas A. Blackburn, Regulatory Unit Counsel, Department of State; (717)783-7200; P.O. Box 69523, Harrisburg, PA 17106-9523; (717)787-0251; tblackburn@pa.gov**
 Secondary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State (717)783-7200; P.O. Box 69523, Harrisburg, PA 17106-9523; (717)787-0251; cymontgome@pa.gov**

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

<input checked="" type="checkbox"/> PROPOSED REGULATION	<input type="checkbox"/> Emergency Certification Regulation;
<input type="checkbox"/> Final Regulation	<input type="checkbox"/> Certification by the Governor
<input type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> 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 regulations of the State Board of Chiropractic (Board) at 49 Pa. Code § 5.56 (relating to application for examination) to require auxiliary personnel seeking to sit for a radiological procedures examination – and therefore be permitted to apply ionizing radiation on behalf of a chiropractor – to apply directly to the examination service and to pay the appropriate fee directly to the service, rather than to apply to the Board and pay the examination fee to the Board. This is consistent with the practice for all other national licensure examinations. The rulemaking also proposes to delete the fee for this examination from § 5.6 (relating to fees), as the Board neither charges nor collects the examination fee.

(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.

Without the proposed rulemaking, auxiliary personnel seeking to sit for the examination may be misled as to where to submit their applications, to whom to pay the fee, and the amount of the fee (as the Board's regulation is outdated from the actual fees charged by the testing services). All persons applying to sit for this examination will benefit from the rulemaking.

(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?

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 did not provide an exposure draft or solicit comments with regard to this administrative rulemaking because it merely updates the process to apply for the radiological procedures examination to comport with current practice. In public session at the Board meeting on May 22, 2014, counsel presented the draft rulemaking for discussion, and the Board approved it for publication as proposed. 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, as would all auxiliary personnel employed by chiropractors who seek to sit for the radiological procedures examination. The Board currently licenses approximately 4,286 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.

There are no 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.

There are no 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 FY11-12	FY -2 FY12-13	FY -1 FY13-14	Current FY FY14-15
Pa. State Bd. of Chiropractic	(actual) \$401,194	(actual) \$450,841	(projected) \$450,000	(budgeted) \$464,000

(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. 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. The Board will meet on the following remaining dates in 2015: May 21, July 30, October 1, and December 3. More information can be found on the Board's website (linked under boards & commissions from professional licensing on the Department's website at www.dos.pa.gov).

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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.

Angela Elliott

State Board of Chiropractic

[Signature]

BY: (DEPUTY ATTORNEY GENERAL)

(AGENCY)

BY:

MAY 15 2015

DOCUMENT/FISCAL NOTE NO. 16A-4324

APR 21 2015

DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION:

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

BY:

[Signature]
Kathleen G. McConnell, DC

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

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

PROPOSED RULEMAKING

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

49 Pa. Code §§ 5.6, 5.63
RADIOLOGICAL PROCEDURES EXAMINATION

The State Board of Chiropractic (Board) proposes to amend §§ 5.6 and 5.63 (relating to fees; and application for examination) 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 522(a) of the act (63 P.S. § 625.522(a)) prohibits auxiliary personnel from performing radiologic procedures on the premises of a chiropractor unless the person (i) is under the director supervision of a chiropractor who is on the premises and (ii) has passed an examination approved by the Board and administered by a third-party testing service. To implement this statutory provision, the Board previously promulgated subchapter F (relating to performance of radiological procedures by auxiliary personnel). Under § 5.62 (relating to auxiliary personnel who may perform radiological procedures), the Board has provided that auxiliary personnel who have passed an examination in radiological procedures approved by the Board, the State Board of Medicine or the State Board of Osteopathic Medicine, or an examination in radiography of the American Registry of Radiologic Technologists (ARRT) or the American Chiropractic Registry of Radiologic Technologists (ACRRT), may apply ionizing radiation to patients for diagnostic purposes on the premises of a licensed chiropractor. In § 5.63 (relating to application for examination), the Board has provided that auxiliary personnel applying for the examination must apply to the Board on Board forms and pay the fee set by the Board. The fee for the radiological procedures examination is specified in § 5.6 (relating to fees).

Under the Department's current agreement with ACRRT, a candidate for the examination is expected to apply directly to the testing service and pay directly to the testing service the fee set by that testing service. This practice is standard for all examinations required by the Bureau of Professional and Occupational Affairs that are developed and administered by National organizations. Consistent with this practice, in 1997 the Board amended § 5.6 to delete the fee for the National Board Examination of the National Board of Chiropractic Examiners (NBCE) (the examination required to be licensed to practice chiropractic) and amended § 5.15 (relating to licensure examinations) to require that candidates for licensure to practice chiropractic apply directly to NBCE and pay NBCE the required fee to sit for its examination. Upon recent notice from ACRRT of its current fee, the Board realized that its regulations for the radiological procedures examination had not been similarly updated.

Description of the Proposed Amendments

The proposed rulemaking would amend § 5.6 to delete the fee for the radiological procedures examination. It would also amend § 5.63 to delete reference to the application forms and to require auxiliary personnel to submit applications and pay the fee directly to the testing service rather than applying to the Board.

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 May 29, 2015, 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 by mail at P.O. Box 69523, Harrisburg, PA 17106-9523 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-4324 (radiological procedures examination), 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 A. GENERAL PROVISIONS

* * * * *

§ 5.6. Fees.

The Board will charge the following fees:

* * * * *

[Radiological procedures examination \$58]

* * * * *

Subchapter F. PERFORMANCE OF RADIOLOGICAL PROCEDURES BY

AUXILIARY PERSONNEL

* * * * *

§ 5.63. Application for examination.

Applications by auxiliary personnel for the examination in radiological procedures approved by the Board [shall be made on forms provided by the Board and] shall be submitted [to the Administrative Office of the Board, Bureau of Professional and Occupational Affairs, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649] directly to the testing service, with the required fee set by the testing service.

* * * * *



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

May 29, 2015

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

Re: Proposed Regulation
State Board of Chiropractic
16A-4324: Radiological Procedures Examination

Dear Chairman Mizner:

Enclosed is a copy of a proposed rulemaking package of the State Board of Chiropractic pertaining to Radiological Procedures Examination.

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:mcm

Enclosure

cc: Ian J. Harlow, Acting Commissioner of
Professional and Occupational Affairs
Patricia Allan, Director of Policy, Department of State
Steven Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Thomas A. Blackburn, Counsel
State Board of Chiropractic
State Board of Chiropractic

