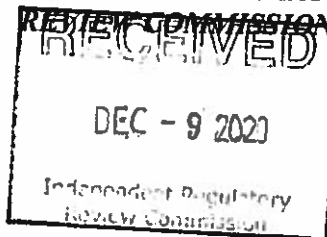


Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY

(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 Physical Therapy

(2) Agency Number: 16A

Identification Number: 6518

IRRC Number: 3285

(3) PA Code Cite: 49 Pa. Code §§ 40.12, 40.16, 40.19, 40.67, 40.162, 40.191 and 40.201—40.209

(4) Short Title:

Child Abuse Reporting Requirements

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

Primary Contact: **Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-5923 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov or**Secondary Contact: **Thomas Davis, Board Counsel, State Board of Physical Therapy, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 717-787-0251) tmdavis@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 proposed rulemaking is needed to update the Board's existing regulations on the subject of child abuse reporting to be consistent with amendments to the Child Protective Services Law (CPSL) (23 Pa.C.S. §§ 6301-6386), including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31 of 2014) on all health-related boards to require training in child abuse recognition and reporting for licensees who are considered "mandated reporters" under the CPSL.

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

Section 3(a) of the Physical Therapy Practice Act (63 P.S. § 1303(a)) sets forth the Board's general rulemaking authority. Under sections 6301—6386 of 23 Pa.C.S. (relating to Child Protective Services Law (CPSL)), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees and certificate holders of the Board.

(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.

Yes, section 6383(b)(2) of the CPSL requires the Board to promulgate regulations to implement the mandatory reporting requirements for licensees and certificate holders of the Board.

(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.

Beginning in 2014, and continuing through 2019, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by Act 31 of 2014 on all health-related Boards to require licensees who are considered "mandated reporters" complete mandatory training in child abuse recognition and reporting. This proposed rulemaking is required to update the Board's existing regulations on the subject of child abuse reporting to be consistent with the numerous amendments made to the CPSL, and to incorporate the mandatory training requirements required by Act 31 of 2014, which the Board implemented as required at the beginning of 2015. All applicants, licensees and certificate holders will benefit by receiving mandatory training with regard to their responsibilities under the CPSL, and all Pennsylvania children will benefit from the increased protections provided by the amendments. Licensees and certificate holders will further benefit from regulations that are consistent with the CPSL, as amended, to avoid confusion as to their responsibilities in this area.

(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.

No. There are no federal standards on the topic.

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

This regulation will not adversely affect Pennsylvania's ability to compete with other states. All surrounding states also have regulations on reporting child abuse.

In Connecticut, in accordance with CT Statutes chapter 319a - Child Welfare, Sec. 17a-101, certain health-related professionals, including physical therapists, are mandated to report suspected child abuse or neglect to the Department of Children and Families' Child Abuse and Neglect Careline or a law enforcement agency. Oral reports must be made within 12 hours of the moment the mandated reporter suspects that abuse or neglect has occurred, followed by a written report within 48 hours. Failure to meet reporting responsibilities may subject the mandated reporter to criminal prosecution and possible action against the individual's license. While training is not mandatory, free training is available to all mandated reporters.

In Delaware, under Title 16 Del. Code § 903, all persons are required to make an immediate report to the Department of Services for Children, Youth and their Families when they know of, or suspect, child abuse or neglect and to follow up with any required written reports. Delaware

now accepts electronic reports at the Delaware Division of Family Services Reporter Portal, but can also accept oral reports to their telephone hotline. Mandatory reporter training is available through the Office of the Child Advocate. Individuals who fail to report child abuse or neglect may be liable to a civil penalty of not to exceed \$10,000 for a first offense, or not to exceed \$50,000 for subsequent violations. Licensees of the Delaware Examining Board of Physical Therapists and Athletic Trainers, which licenses physical therapists and physical therapist assistants, may be subject to disciplinary action for failing to report child abuse or neglect. (Title 24 Del. Code § 2616).

In Maine, child abuse or neglect reports must be made immediately by telephone to the Department of Health and Human Service, Office of Child and Family Services' hotline. Under Title 22 of the Maine Revised Statutes § 4011-A, mandated reporters include medical workers, although that term is not defined. Mandated reporters must immediately make a report when that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred. The Maine Board of Examiners in Physical Therapy may discipline a licensee for failure to report incidences of child abuse or neglect as mandated by state law. (See, regulations of the Maine Board of Examiners in Physical Therapy at Chapter 5, section 3(C)(12) which clarifies that failing to report suspected child abuse is considered gross negligence, incompetency or misconduct.) In Maine, mandated reporters shall complete mandated reporter training at least once every 4 years.

In Maryland, under MD Family § 5-701—5-715 (relating to child abuse and neglect) all health practitioners (which includes any person who is authorized to practice healing under the Health Occupations Article or § 13-516 of the Education Article) are required to report both orally and in writing any suspected child abuse or neglect. Oral reports must be made immediately and written reports must be made within 48 hours of contact in which the disclosure of the suspected abuse or neglect was given. All reports of abuse must be made to the local departments of social services and the appropriate law enforcement agency. If a licensee knowingly fails to report suspected abuse of a child, they may be subject to professional sanctions by licensing boards. As of October 1, 2019, there are now criminal penalties for mandated reporters who knowingly fail to report child abuse. Under MD Criminal Code § 3-606.2, a mandated reporter having actual knowledge of abuse or neglect who knowingly fails to make a required report commits a misdemeanor and is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 3 years, or both. Anyone making a good faith report is immune from civil liability and criminal penalty. While not required, mandated reporter training is available.

In Massachusetts, under Massachusetts General Law Annotated 119 § 51A, only those physical therapists that work in hospitals appear to be included within the definition of mandated reporter as "hospital personnel engaged in the examination, care or treatment of persons" (see Massachusetts General Law Annotated 119 § 21 (relating to definitions applicable to sections 21 to 51H)). Mandated reporters must report to the Department of Children and Families when they suspect that a child is being abused or neglected immediately by telephone to the DCF area office that services the city or town where the child lives or the Child-at-Risk Hotline. As a mandated reporter, it is also required by law to mail or fax a written report to the Department within 48 hours of making the oral report. Mandated reporters are required to report any physical or emotional injury resulting from abuse; any indication of neglect, including malnutrition; any instance in which a child is determined to be physically dependent upon an addictive drug at birth; any suspicion of child sexual exploitation or human trafficking; or death as a result of abuse or neglect. Failure to make required reports subjects the mandated reporter to fines up to \$1,000

for a first offense. A mandated reporter that willfully fails to report child abuse or neglect that results in serious bodily injury or death is subject to a fine of up to \$ 5,000 and 2 ½ years in jail, and be reported to the person's professional licensing board. All mandated reporters who are professionally licensed are required to complete training to recognize and report child abuse and neglect. DCF has an online training video available for mandatory reporters.

Similarly, in New Hampshire, under N. H. Rev. Stat. § 169-C:29, physical therapists would be considered mandated reporters only if they are "hospital personnel (engaged in admission, examination, care and treatment of persons)" having reason to suspect that a child has been abused or neglected. Mandated reporters are required to report suspected child abuse or neglect to the Central Intake Unit of the New Hampshire Division for Children, Youth and Families. An oral report shall be made immediately by telephone and followed within 48 hours by a report in writing, if requested. Individuals who make a good faith report have immunity from civil and criminal liability; and privileged communications between a professional and their patient/client is does not apply and does not excuse the failure to report. Failure to report is a misdemeanor. Training on the reporting requirements is not required.

In New Jersey, under N.J.S.A 9:6-8.8—8:6-8.20 (relating to abused child—reports and protective custody) any person having reasonable cause to believe that a child has been subjected to abuse, including sexual abuse, shall report immediately to the State Central Registry's hotline. Individuals making reports of child abuse have immunity from civil or criminal liability. Any person who knowingly fails to report suspected abuse or neglect according to the law or to comply with provisions of the law is a "disorderly person." However, if the failure to report involves sexual abuse it is a crime of the fourth degree. The New Jersey Department of Children and Families offers an online Mandated Reporter Training resource.

In New York, under NY Soc Serv § 413, it would appear that physical therapist are only considered mandated reporters if they are "hospital personnel engaged in the admission, examination, care or treatment of persons." Mandated reporters are required by law to report suspected abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment whenever they have reasonable cause to suspect that a child coming before them in their professional or occupational capacity is an abused or maltreated child. The law also assigns civil and criminal liability to those professionals who do not comply with their mandated reporter duties; including being criminally charged with a Class A misdemeanor, being subject to criminal penalties, and being sued in a civil court for monetary damages for any harm caused by the failure to report. Reasonable cause to suspect child abuse or maltreatment means that, based on one's observations, professional training and experience, a licensee believes the parent or person legally responsible for a child has harmed that child or placed that child in imminent danger or harm. In addition, New York requires individuals, when applying initially for licensure, to complete 2 hours of coursework or training in the identification and reporting of child abuse and maltreatment. This is a one-time requirement and once taken does not need to be completed again. The New York State Education Department, Office of the Professions oversees the training requirements for mandated reporters.

In Ohio, under Ohio R. C. § 2151.421, all health care professionals are mandated to report if a child under the age of eighteen or a mentally retarded, developmentally disabled, or physically impaired person under the age of twenty-one has been abused or neglected. A licensee making a report shall make it to the Ohio Department of Job and Family Services hotline, or to the public children services agency or municipal or county peace officer in the county in which the child

resides. The report must be made immediately by telephone or in person and must be followed by a written report if requested. Failure to report is generally a misdemeanor. There does not appear to be a mandatory training requirement in Ohio.

In Virginia, under Title 63.2 of the Code of Virginia § 63.2-1509, any person licensed to practice any of the healing arts must report if they have reason to suspect a child is an abused or neglected child immediately to the local department of the county or city where the child resides, where the abuse or neglect is believed to have occurred, or to the Department of Social Service's toll-free child abuse and neglect hotline. A person making a good faith report is immune from criminal or civil liability. Any person required to file a report who fails to do so, shall be fined not more than \$500 for the first failure and for any subsequent failures not more than \$1,000 and may be charged with a Class 1 misdemeanor. Mandated reporter training on recognizing and reporting child abuse and neglect is available on the Virginia Department of Social Services website.

In West Virginia, under W.Va. Code § 49-2-801, any health care professional is required to report suspected child abuse or neglect. When a licensee suspects that a child is being abused or neglected, or observes a child being subjected to conditions that are likely to result in abuse or neglect, or believes that a child has suffered serious physical abuse, sexual abuse or sexual assault, a report must be made to the Child Protective Services unit in the county office of the Department of Health and Human Resources where the licensee is located or the State Police or other law enforcement agency that has jurisdiction to investigate the report. The Department of Health and Human Resources maintains a 24-hour toll free reporting hotline. Reports must be made immediately by phone and followed up within 48 hours by a written report, if requested. Anyone making a good faith report is immune from civil or criminal liability. Failure to file a required report is a misdemeanor, punishable by imprisonment up to 90 days, a fine of up to \$5,000, or both. There does not appear to be a mandatory training requirement.

Based on these requirements from other states, the Board believes that this regulation will not place Pennsylvania at a competitive disadvantage.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. The regulation does not affect any other regulations of the agency or other state agencies. However, there are 14 additional boards that will be promulgating similar regulations in the upcoming months (all health-related boards, and the State Board of Funeral Directors).

(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 discusses its regulatory proposals at regularly scheduled public meetings of the Board. Representatives of the professional associations representing the regulated community routinely attend those meetings. No exposure draft of the proposal was circulated because the purpose of the rulemaking is simply to amend the Board's existing regulations to be consistent with amendments made to the CPSL.

(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 and certificate holders of the Board will be affected by the regulation, including those that are or work for small businesses. At the present time, there are approximately 15,017 licensed physical therapists and 1,330 certified physical therapist assistants. In addition, all applicants for a license or certificate issued by the Board would be affected by the mandatory training requirements set forth in the proposed regulation as required under section 6383(b)(3)(i) of the CPSL. The Board currently processes an average of approximately 1,000 applications a year.

According to the Pennsylvania Department of Labor and Industry in 2016 (the most recent year for which data is available), physical therapists work in the following locations: offices of physical therapists (33%), hospitals (26%); home health care services (10%); nursing and residential care facilities (7%) and approximately 7% are self-employed. Physical therapist assistants generally work in offices of physical therapists (45%); hospitals (23%); nursing care facilities (11%); home health care services (8%), and offices of physicians (5%).

Small businesses are defined in Section 3 of the Regulatory Review Act, (71 P.S. § 745.3) which provides that a small business is defined by the SBA'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 2019 NAICS standards to the types of businesses where licensees may work, for an office of all other miscellaneous health care practitioners (which would include physical therapists) (#621399), the small business threshold is \$8.0 million or less in average annual receipts. For all types of hospitals (#622110, 622210 and 622310), the small business threshold is \$41.5 million or less. For home health care services (#621610), the small business threshold is \$16.5 million or less. For offices of physicians (#621111), the small business threshold would be \$12.0 million or less. Finally, nursing care facilities (#623110) have a small business threshold of \$30 million or less in average annual receipts. Based on this variety of employers, the Board believes that most physical therapists and physical therapist assistants in Pennsylvania are employed in small businesses. The Board does not collect information on the size of the businesses where its licensees are employed. However, for purposes of determining the economic impact on small businesses, the Board must assume that a large number of its licensees either are or work for small businesses as that term is defined by the SBA and Pennsylvania's Regulatory Review Act.

Those licensees that are self-employed are likely small businesses that would be impacted by the costs associated with this proposed rulemaking. For those licensees who are employees of small businesses, whether these small businesses will be impacted by the regulations depends on whether the businesses would pay costs associated with obtaining the initial and continuing education relating to child abuse recognition and reporting for employees in these licensure categories. Because these costs are associated with individuals applying for initial licensure or licensure renewal, any business (small or otherwise) could avoid these costs by requiring employees to bear the costs associated with compliance.

(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.

All licensees and certificate holders of the Board will be affected by the regulation. At the present time, there are approximately 15,017 licensed physical therapists and 1,330 certified physical therapist assistants. In addition, all applicants for a license or certificate issued by the Board would be affected by the mandatory training requirements set forth in the proposed regulation as required under section 6383(b)(3) of the CPSL. The Board currently processes approximately 1,000 applications a year.

(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 anticipate any significant fiscal impact or paperwork requirements relating to the proposed rulemaking. Because licensees and certificate holders are already required to complete mandatory continuing education, and the 2 hours of continuing education in child abuse recognition and reporting are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure or certification would incur an additional requirement, and because there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal, ranging in cost from \$0 to \$100 per course. Because all approved Act 31 training providers are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensee holders. In addition, the implementation of an electronic reporting system for mandatory reporters of suspected child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements. The regulation benefits all licensee holders, by providing clarity regarding the reporting obligations; and benefits all Pennsylvania children by the increased protections provided.

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

Because any costs or adverse effects are minimal, the benefits to the regulated community of clarity regarding their reporting obligations and the increased protections to Pennsylvania children far outweigh the costs.

(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 should be no additional cost to the regulated community of existing licensees to comply with the updated regulations to complete the 2 hours of continuing education, as these are not new requirements. In fact, the new electronic reporting system will reduce any paperwork requirements. The only individuals who would incur additional costs are applicants for licensure or certification who will need to complete 3 hours of approved training in child abuse recognition and reporting as a condition of licensure. However, because there are numerous low-cost and free options available, this cost is minimal. Additionally, as more and more schools are submitting their courses for approval, more and more applicants will have completed the required training as part of their professional education and will incur no additional costs. At the present time, the cost for the required training ranges from free to \$100 per course. So, at an average of 1,000 applications per year, the cost to applicants could range from \$0 to \$ 100,000 per year. For purposes of this rulemaking, the Board is assuming that most applicants would choose a free or low-cost option and estimates an average cost of no more than \$25 each on average or approximately \$25,000 per year.

(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.

The costs to state government associated with implementation of the regulation include the costs associated with the electronic reporting system by which approved providers submit attendance/participation records to the Bureau and the administrative costs of assuring applicants have complied with the training requirements. The costs associated with the electronic reporting system included an initial system upgrade of \$35,000 incurred in fiscal year 2014-2015. Ongoing annual operating costs of approximately \$90,000 include the costs associated with reviewing application records to determine compliance, sending discrepancy letters, responding to inquiries, working with the IT consultant, managing the child abuse education resource account, approving new courses, etc. These costs are allocated to the 16 boards that are impacted by the training requirements based on licensee population.

(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.

There are no additional legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork requirements required of the regulated community. The Bureau/Board has additional recordkeeping responsibilities in receiving, retaining, and retrieving electronic records of completed child abuse training for applicants and licensees.

(22a) Are forms required for implementation of the regulation?

No forms are required for implementation of this regulation, as completion of the required child abuse training is being reported electronically to the Bureau by the course provider.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(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 2020-21	FY +1 2021-22	FY +2 2022-23	FY +3 2023-24	FY +4 2024-25	FY +5 2025-26
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
COSTS:						
Regulated Community	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Local Government						
State Government	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000
Total Costs	\$115,000	\$115,000	\$115,000	\$115,000	\$115,000	\$115,000
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0

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

Program	FY -3 FY 2017-18	FY -2 FY 2018-19	FY -1 FY 2019-20 estimated	Current FY FY 2020-21 budgeted
State Board of Physical Therapy	\$ 733,823.13	\$ 854,284.81	\$ 769,000.00	\$ 880,000.00

(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 regulation should have no adverse impact on small business. The new streamlined electronic system for making reports of suspected child abuse has decreased the paperwork requirement; and although licensees and certificate holders who are employees of small businesses now have to complete mandatory training in child abuse recognition and reporting, the law and regulations provide that this requirement is incorporated in the existing continuing education requirements, so there is no increased burden. Also, many approved courses are free or low cost. Additionally, employers can avoid any impact by requiring their employees to pay for their own licensure/certification-related costs, including the costs associated with continuing education.

(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 identified no special groups that needed special provisions. The CPSL applies equally to all mandated reporters.

(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.

No alternative regulatory provisions have been considered. The Board believes that these regulations provide the least burdensome means of complying with the CPSL.

(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 performance 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 there is no anticipated adverse impact on small business, a regulatory flexibility analysis was not conducted. No less stringent compliance or reporting requirements or less stringent schedules or deadlines for compliance for small businesses would be consistent with the goals of the CPSL. The new electronic reporting process established by the Department of Human Services simplifies the reporting process for all businesses. There are no design or operational standards in the regulation. Exempting small businesses or employees of small businesses from any of the requirements contained in the regulation would not be consistent with the intent of the CPSL.

(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.

No data is the basis for this regulation.

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

- A. The length of the public comment period: **30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*.**
- B. The date or dates on which any public meetings or hearings will be held: **The Board considers its regulatory proposals at regularly scheduled public meetings, a schedule of which is included in item (30) below.**
- C. The expected date of delivery of the final-form regulation: **Spring 2021**
- D. The expected effective date of the final-form regulation: **Upon publication of the final-form rulemaking in the *Pennsylvania Bulletin* – expected in Spring of 2021**
- E. The expected date by which compliance with the final-form regulation will be required: **Upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.**
- F. The expected date by which required permits, licenses or other approvals must be obtained: **N/A**

(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. The Board will meet on the following remaining date in 2020: November 30, 2020; and on the following dates in 2021: January 21, March 25, May 27, July 22, September 16, November 17, 2021. More information can be found on the Department's website at www.dos.pa.gov.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

DEC - 9 2020

Independent Regulatory
Review Commission

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>Amy M. Elliott <small>Digitally signed by Amy M. Elliott DN: cn=Amy M. Elliott, o=Pennsylvania Office of Attorney General, ou=Chief Deputy Attorney General, email=Amy.M.Elliott@attorneygeneral.gov, c=US Date: 2020.12.07 11:58:15 -0500</small></p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p align="center">12/1/2020 _____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved Objections attached</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p align="center">State Board of Physical Therapy _____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 16A-6518</p> <p>DATE OF ADOPTION: _____</p> <p>BY: Cynthia Potter _____ Cynthia Potter, PT, DPT</p> <p>TITLE Board Chair _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p align="center">Marisa H. Z. Lehn _____</p> <p>BY: _____</p> <p align="center">11/9/2020 _____ DATE OF APPROVAL</p> <p align="center">Deputy General Counsel (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF STATE
 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
 STATE BOARD OF PHYSICAL THERAPY

TITLE 49 PA CODE CHAPTER 40

§§ 40.12, 40.16, 40.19, 40.67, 40.162, 40.191, 40.192 and 40.201—40.209

CHILD ABUSE REPORTING REQUIREMENTS

The State Board of Physical Therapy (Board) proposes to amend § 40.12, 40.16, 40.19, 40.67, 40.162, 40.191, 40.192 and 40.201—40.207, and to add §§ 40.208 and 40.209 (relating to child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

Effective date

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

Statutory authority

Section 3(a) of the Physical Therapy Practice Act (63 P.S. § 1303(a)) sets forth the Board's general rulemaking authority. Under sections 6301—6386 of 23 Pa.C.S. (relating to Child Protective Services Law (CPSL)), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees and certificate holders of the Board.

Background and purpose

Beginning in 2014, and continuing through 2019, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31 of 2014) on all health-related Boards to require training in child abuse recognition and reporting for licensees and certificate holders who are considered “mandated reporters” under the CPSL. Section 2 of Act 31 of 2014 provided that these training requirements would apply to all persons applying for a license or certificate, or applying for renewal of a license or certificate, on or after January 1, 2015, and were implemented as of that date. These amendments are required to update the Board's existing regulations on the subject of child abuse reporting to be consistent with the CPSL.

Description of the proposed amendments

The Board proposes to amend §§ 40.12, 40.16 and 40.162 (relating to application for licensure; licensure by endorsement; and application for certification) to include the requirement that an applicant for licensure as a physical therapist or certification as a physical therapist assistant complete at least 3 hours of training in child abuse recognition and reporting as a condition of licensure or certification as required by Act 31 of 2014. Similarly, the Board proposes to amend §§ 40.19 and 40.191 (relating to renewal of physical therapist license; and renewal of certification) to set forth the requirement imposed by Act 31 of 2014 that all licensees and certificate holders applying for biennial renewal complete at least 2 hours of continuing education in child abuse recognition and reporting as a condition of renewal. The Board is also proposing amendments to §§ 40.67 and 40.192 (relating to continuing education for licensed physical therapist; and continuing education for certified physical therapist assistant) to incorporate these 2 contact hours of continuing education.

The Board next proposes comprehensive amendments to the child abuse reporting requirements in Subchapter D (relating to child abuse reporting requirements). First, the Board proposes to amend § 40.201 (relating to definitions) to update the definitions of terms used in the CPSL. Specifically, the Board finds it necessary to define the terms “bodily injury,” “child,” “parent,” “program, activity or service” and “serious physical neglect” and to amend the definitions of “child abuse,” “perpetrator,” “person responsible for the child’s welfare,” “recent acts or omissions” and “sexual abuse or exploitation” to comport with amendments made to the CPSL. The Board proposes to add definitions for the terms “Bureau” and “mandated reporter” for ease of reference. The Board proposes to delete definitions for “individual residing in the same home as the child” and “serious physical injury” because these terms have been deleted from the CPSL. The Board also proposes to amend, where necessary throughout this proposed rulemaking, “Department of Public Welfare” to “Department of Human Services,” as the name of that agency has changed.

The Board is proposing to amend § 40.202 (relating to suspected child abuse—mandated reporting requirement) to provide the general rule that all licensed physical therapists and certified physical therapist assistants are considered mandated reporters, and to set forth the mandated reporting requirements in sections 6311(b) of the CPSL (relating to persons required to report suspected child abuse), and the reporting procedures in section 6313 of the CPSL (relating to reporting procedure). The Board has also determined that it is necessary to propose amendments to § 40.203 (relating to photographs, medical tests and X-rays of child subject to report) to set forth the requirement to submit documentation, summaries or reports relating to photographs, medical tests and x-rays to the county children and youth social service agency within 48 hours of making an electronic report in accordance with section 6314 of the CPSL (relating to photographs, medical tests and X-rays of child subject to report).

The Board is proposing to amend § 40.204 (relating to suspected death as a result of child abuse—mandated reporting requirement) to incorporate an amendment made to section 6317 of the CPSL (relating to mandatory reporting and postmortem investigation of death) to permit a report to be made to the appropriate coroner or medical examiner of the county where the death occurred, or of the county where the injuries were sustained. Further, the Board is proposing to amend § 40.205 (relating to immunity from liability) to incorporate amendments made to section 6318 of the CPSL (relating to immunity from liability); and to amend § 40.206 (relating to confidentiality—waived) to incorporate the provisions of section 6311.1 of the CPSL (relating to privileged communications). The Board also proposes to amend § 40.207 (relating to noncompliance) to update the criminal penalties for willful failure to make a report or referral to conform to the increased criminal penalties in the amendments to section 6319 of the CPSL (relating to penalties).

The Board proposes to add two new sections to Subchapter D to incorporate the mandatory training requirements in Act 31 of 2014. Proposed § 40.208 (relating to child abuse recognition and reporting—mandatory training requirement) would set forth the requirements in section 6383(b)(3) of the CPSL that all individuals applying to the Board for an initial license or certificate are required to complete at least 3 hours of training in child abuse recognition and reporting which

has been approved by the Department of Human Services; and that all licensees and certificate holders seeking renewal are required to complete at least 2 hours of continuing education in child abuse recognition and reporting as a requirement of renewal. The Board would also provide notice that these 2 or more hours of training would be accepted as a portion of the total continuing education required for biennial renewal, and not an additional requirement, as provided in section 6382(b)(3)(ii) of the CPSL. In addition, the Board would provide notice that it will not renew a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee or certificate holder or the licensee or certificate holder has obtained an exemption as permitted by the CPSL.

This section would also include the process for applying for an exemption from the mandatory training requirements as set forth in section 6383(b)(4) and (6) of the CPSL, for individuals who have already completed similar training or who otherwise should be exempt from the training requirements. The Board notes that section 6383(b)(4)(ii)(B) of the CPSL provides an exemption for individuals who have already completed child abuse recognition training required by the Human Services Code (62 P.S. §§ 101—1503) (formerly known as the Public Welfare Code), and the training was approved by the Department of Human Services. However, the Department of Human Services has confirmed that there is no provision in the Human Services Code that requires such training. Instead, section 6383(c) of the CPSL sets forth the requirement that certain individuals and entities regulated by the Department of Human Services complete mandated reporter training. Therefore, the Board believes it is appropriate to include an exemption for a licensee or certificate holder who has already completed comparable training in child abuse recognition and reporting required by the Department of Human Services under section 6383(c). For example, if a physical therapist happened to be a foster parent and, therefore, was required to complete the training under section 6383(c), there would be no need to repeat the training as a condition of licensure or license renewal under section 6383(b). In addition, section 6383(b)(6) permits the Board to exempt a licensee or certificate holder from the training requirement if the licensee or certificate holder “submits documentation acceptable to the licensing board that the licensee [or certificate holder] should not be subject to the training or continuing education requirement.” The Board believes that this section also provides authority to the Board to determine that those licensees and certificate holders who are required to complete comparable training under section 6383(c) should be exempt from the training requirement under section 6383(b), provided they submit acceptable documentation to the Board evidencing completion of comparable training.

Finally, the Board proposes to add § 40.209 (relating to child abuse recognition and reporting course approval process) to set forth the administrative process developed by the Bureau of Professional and Occupational Affairs (Bureau), in conjunction with the Department of Human Services, for individuals, entities and organizations to apply for approval to deliver the training required under Act 31 of 2014. The Bureau has established a requirement that to be approved to provide the mandatory training in child abuse recognition and reporting, an applicant must be able to report participation/attendance electronically to the Bureau. In this manner, the completion of the training is automatically imported into the individual’s record with the Board at the time the course is completed. Then, prior to issuing or renewing a license or certificate, the system verifies that the training was completed as required. If no record exists, the applicant, licensee or certificate

holder would be notified of the need to complete an approved course before the license or certificate can be issued or renewed.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Because licensees and certificate holders are already required to complete mandatory continuing education, and these 2 hours in child abuse recognition and reporting are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure or certification would incur an additional requirement, and as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved training providers of the mandatory training in child abuse recognition and reporting are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees or certificate holders. In addition, the implementation of an electronic reporting system for mandated reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P.S. § 745.5(f)), on December 9, 2020, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC). A copy of this material is available to the public upon request. On the same date, the Board submitted this proposed rulemaking to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin. The Board will submit this proposed rulemaking and required material to the standing committees of the House and Senate no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, 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 Counsel, Department of State at P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail to RA-STRegulatoryCounsel@pa.gov, within 30

days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-6518 (Child Abuse Reporting Requirements).

Cynthia Potter, PT, DPT
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS

* * * * *

LICENSURE

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§ 40.12. Application for licensure.

- (a) Evidence, satisfactory to the Board, shall be submitted indicating that the applicant:
- (1) Is at least 20 years of age, unless otherwise waived upon application to and review by the Board.
 - (2) Is of good moral character.
 - (3) Is not addicted to the habitual use of alcohol, narcotics or other habit forming drugs.
 - (4) Has met the professional requirements in § 40.11 (relating to educational requirements for licensure by examination).
 - (5) Has completed at least 3 hours of training in child abuse recognition and reporting in accordance with § 40.208(a) (relating to child abuse recognition and reporting—mandatory training requirement).
- (b) The applicant shall apply on forms supplied by the Board, answer all questions fully and provide all documentation required under subsection (a).

- (c) The applicant shall pay the fee in § 40.5 (relating to fees) for application for physical therapist licensure by examination/endorsement.

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§ 40.16. Licensure by endorsement.

- (a) An applicant for licensure by endorsement who is educated in another state or territory of the United States is required to submit the professional credentials in § 40.11 (relating to license by examination; requirements for examination), and comply with the following:

(1) [Submit] The applicant shall submit a written application on forms provided by the Board, together with evidence satisfactory to the Board that the applicant is licensed or otherwise registered as a physical therapist in another state or territory of the United States, or in the District of Columbia, if the requirements for licensure or registration in the state, territory or district were, at the date of licensure or registration, substantially equal to the requirements for licensure or registration in this Commonwealth under the act.

(2) [A] The applicant shall submit the fee prescribed in § 40.5 (relating to fees) [must accompany each application] for licensure by endorsement.

(3) The applicant shall have completed at least 3 hours of training in child abuse recognition and reporting in accordance with § 40.208(a) (relating to child abuse recognition and reporting—mandatory training requirement).

- (b) An applicant for licensure by endorsement who received education in a country outside of the United States is required to meet the educational requirements as set forth in § 40.17(5) and

(6) (relating to foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience) and comply with the following:

(1) The applicant shall submit documentary evidence that the applicant is authorized to practice as a physical therapist without limitation in the country where the professional education occurred.

(2) The applicant shall hold a valid license by examination in another state or territory of the United States, providing the requirements were, at the time of receiving the license, substantially equivalent to the requirements as set forth in the act.

(3) The applicant shall have completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 40.208(a) (relating to child abuse recognition and reporting—mandatory training requirement).

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§ 40.19. Renewal of physical therapist license.

* * * * *

(c) A licensee applying for biennial renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee in § 40.5 (relating to fees) for application for biennial renewal of physical therapist license.

(2) Disclose any license to practice as a physical therapist in another state, territory, possession or country.

- (3) Disclose any disciplinary action pending before the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed to practice in that other jurisdiction.
- (4) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo contendere or other criminal conviction since the most recent application for renewal.
- (5) Verify that the licensee has complied with the continuing education requirements mandated by section 7.2 of the act (63 P.S. § 1307.2) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 40.67 (relating to continuing education for licensed physical therapist), including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 40.208(b) (relating to child abuse recognition and reporting—mandatory training requirement). The Board will not renew a license if the licensee has not completed the continuing education required under [section 7.2 of the act] § 40.67 during the biennial period immediately preceding the period for which renewal is sought.
- (6) Verify that, if practicing as a physical therapist in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with section 9(b)(4) of the act (63 P.S. § 1309(b)(4)) and § 40.69 (relating to professional liability insurance).

* * * * *

CONTINUING EDUCATION

§ 40.67. Continuing education for licensed physical therapist.

(a) *Contact hour requirements.* [Beginning with the January 1, 2013—December 31, 2014 biennial renewal period, a] A licensed physical therapist shall satisfy the following continuing education requirements.

(1) During each biennial renewal period, a licensee shall complete qualifying continuing education equal to at least 30 contact hours of continuing physical therapy education, including at least 2 contact hours in law or ethics applicable to the practice of physical therapy, and at least 2 contact hours in child abuse recognition and reporting in accordance with § 40.208(b) (relating to child abuse recognition and reporting—mandatory training requirement).

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Subchapter C. PHYSICAL THERAPIST ASSISTANTS

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CERTIFICATION

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§ 40.162. Application for certification.

(a) The applicant shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following criteria. The applicant:

- (1) Is at least 18 years of age, unless otherwise determined by the Board that the [candidate] applicant has proved the capability to accept and handle the responsibilities appurtenant to certification.
- (2) Is of good moral character.
- (3) Is not addicted to the habitual use of alcohol, narcotics or other habit-forming drugs.

(4) Has met the professional requirements for certification under § 40.163 (relating to requirements for certification).

(5) Has completed at least 3 hours of training in child abuse recognition and reporting in accordance with § 40.208(a) (relating to child abuse recognition and reporting—mandatory training requirement).

* * * * *

MAINTENANCE OF CERTIFICATION

§ 40.191. Renewal of certification.

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(c) To retain the right to provide services as a physical therapist assistant, the certified physical therapist assistant's certification shall be renewed by the certified physical therapist assistant in the manner prescribed by the Board, and the required fee shall be paid by the certified physical therapist assistant prior to the expiration of the next biennium. A certified physical therapist assistant applying for biennial certificate renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee in § 40.5 (relating to fees) for application for biennial renewal of physical therapist assistant certificate.

(2) Disclose any license, certificate, registration or other authorization to provide services as a physical therapist assistant in another state, territory, possession or country.

(3) Disclose any disciplinary action pending before the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed, registered or certified to practice in that other jurisdiction.

(4) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo contendere or other criminal conviction since the most recent application for renewal.

(5) Verify that the certified physical therapist assistant has complied with the continuing education requirements mandated by section 9.1(j) of the act (63 P. S. § 1309.1(j)) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 40.192 (relating to continuing education for certified physical therapist assistant), including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 40.208(b) (relating to child abuse recognition and reporting—mandatory training requirement). The Board will not renew a physical therapist assistant certification if the certified physical therapist assistant has not completed the continuing education required under [section 9.1(j) of the act] § 40.192 during the biennial period immediately preceding the period for which renewal is sought.

* * * * *

CONTINUING EDUCATION

§ 40.192. Continuing education for certified physical therapist assistant.

(a) *Contact hour requirements.* [Beginning with the January 1, 2013—December 31, 2014 biennial renewal period, a] A certified physical therapist assistant shall satisfy the following continuing education requirements.

(1) During each biennial renewal period, a certified physical therapist assistant shall complete qualifying continuing education equal to at least 30 contact hours of continuing physical therapy education, including at least 4 contact hours in identifying and responding to emergency health conditions, [and] at least 2 contact hours in law or ethics applicable to

the practice of physical therapy and at least 2 contact hours in child abuse recognition and reporting in accordance with § 40.208(b) (relating to child abuse recognition and reporting—mandatory training requirement).

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Subchapter D. CHILD ABUSE REPORTING REQUIREMENTS

§ 40.201. Definitions.

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

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Bodily injury—Impairment of physical condition or substantial pain.

Bureau—Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—[A term meaning any of the following:

- (i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.
- (ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.]

Intentionally, knowingly or recklessly doing any of the following:

- (i) Causing bodily injury to a child through any recent act or failure to act.
- (ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (iv) Causing sexual abuse or exploitation of a child through any act or failure to act.
- (v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (vii) Causing serious physical neglect of a child.
- (viii) Engaging in any of the following recent acts:
 - (A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
 - (B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.
 - (C) Forcefully shaking a child under 1 year of age.
 - (D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

ChildLine—An organizational unit of the Department of [Public Welfare] Human Services, which operates a 24-hour a day Statewide toll-free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

[*Individual residing in the same home as the child*—An individual who is 14 years of age or older and who resides in the same home as the child.]

Mandated reporter—A person who is required under section 6311 of the Child Protective Services Law (23 Pa.C.S. § 6311) to make a report of suspected child abuse. For purposes of this subchapter, the term includes all physical therapists and physical therapist assistants.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—[A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent] A person who has committed child abuse as defined in this section.

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 14 years of age or older and responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption of the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 18 years of age or older and responsible for the child's welfare.

(E) A person 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. [The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.]

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

(i) A youth camp or program.

(ii) A recreational camp or program.

- (iii) A sports or athletic program.
- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

Recent [acts or omissions] act or failure to act—[Acts or omissions] An act or failure to act committed within 2 years of the date of the report to the Department of [Public Welfare] Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

[*Serious physical injury*—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.]

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—[The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.] Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

- (C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).
- (D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).
- (E) Institutional sexual assault as defined in 18 Pa.C.S. 3124.2 (relating to institutional sexual assault).
- (F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).
- (G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).
- (H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).
- (I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).
- (J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).
- (K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).
- (L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).
- (M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).
- (iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 40.202. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), [physical therapists and physical therapist assistants who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare and to the appropriate county agency when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse] all physical therapists and physical therapist assistants are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(1) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(2) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(3) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(4) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

- (b) *Staff members of public or private agencies, institutions and facilities.* [Physical therapists and physical therapist assistants who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the Board regulated practitioner, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d)] Whenever a physical therapist or physical therapist assistant is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, the physical therapist or physical therapist assistant shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.
- (c) *Reporting procedure.* [Reports of suspected child abuse shall be made by telephone and by written report.

- (1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.
- (2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.]

A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* [Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available] A written or electronic report of suspected child abuse, shall include the following information, if known:

(1) The names and addresses of the child, [and] the child's parents [or] and any other person responsible for the [care of the child, if known] child's welfare.

(2) Where the suspected child abuse occurred.

(3) The age and sex of [the subjects] each subject of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or [siblings] any sibling of the child.

- (5) The name and relationship of [the persons] each individual responsible for causing the suspected abuse[,if known,] and any evidence of prior abuse by [those persons] each individual.
- (6) Family composition.
- (7) The source of the report.
- (8) The name, telephone number and e-mail address of the person making the report [and where that person can be reached].
- (9) The actions taken by the [reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner] person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.
- (10) Other information required by Federal law or regulation.
- (11) Other information which the Department of [Public Welfare] Human Services may require by regulation.

§ 40.203. Photographs, medical tests and X-rays of child subject to report.

A physical therapist or physical therapist assistant may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 40.202(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 40.204. Suspected death as a result of child abuse—mandated reporting requirement.

A physical therapist or physical therapist assistant who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 40.205. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a physical therapist or physical therapist assistant who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or [the taking of photographs] engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the physical therapist's or physical therapist assistant's actions. For the purpose of any civil or criminal proceeding, the good faith of the physical therapist or physical therapist assistant shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a physical therapist's or physical therapist assistant's actions [in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs] under §§ 40.202—40.204 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and x-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 40.206. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 40.202—40.204 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the confidentiality provisions in § 40.52(c) (relating to unprofessional conduct; physical therapists) and any other client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1, privileged communications between a mandated reporter and a patient does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse.

§ 40.207. Noncompliance.

(a) *Disciplinary action.* A physical therapist or physical therapist assistant who willfully fails to comply with the reporting requirements in §§ 40.202—40.204 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1311).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties [for failure to report]), a physical therapist or physical therapist assistant who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits [a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.] a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 40.208. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license or certificate shall complete, as a condition of licensure, at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services.

(b) Except as provided in subsection (c), licensees and certificate holders seeking renewal of a license or certificate issued by the Board shall complete, as a condition of biennial renewal of the license or certificate, at least 2 hours of approved continuing education in child abuse

recognition and reporting, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 40.209 (relating to child abuse recognition and reporting course approval process). The Board will not renew a license or certificate unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee or certificate holder in an approved course or the licensee or certificate holder has obtained an exemption under subsection (c).

(c) An applicant, licensee or certificate holder may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant, licensee or certificate holder meets one of the following:

(1) The applicant, licensee or certificate holder submits documentation demonstrating that:

(i) The applicant, licensee or certificate holder has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(2) The applicant, licensee or certificate holder submits documentation demonstrating that:

- (i) The applicant, licensee or certificate holder has already completed child abuse recognition training required by section 23 Pa.C.S. § 6383(c) (relating to education and training).
 - (ii) The training was approved by the Department of Human Services.
 - (iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.
- (3) The applicant, licensee or certificate holder submits documentation demonstrating that the applicant, licensee or certificate holder should not be subject to the training or continuing education requirement. Each request for an exemption under this paragraph will be considered on a case-by-case basis.

§ 40.209. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services (DOH), Office of Children, Youth and Families, and to the Bureau at the following addresses:

- (1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.
- (2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions shall include the following:

- (1) Contact information (mailing address, email address and telephone number) for the agency/course administrator.
- (2) General description of the training and course delivery method.
- (3) Title of the course.
- (4) Timed agenda and estimated hours of training.
- (5) Learning objectives.
- (6) Intended audience.
- (7) All course related materials, including as applicable:
 - (i) Handouts.
 - (ii) Narrated script or talking points.
 - (iii) Interactive activities or exercises.
 - (iv) Videos and audio/visual content.
 - (v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.
 - (vi) For online courses, a transcript or recording of audio training.
- (8) Citation of sources, including written permission to use copyrighted material, if applicable.
- (9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.
- (10) Printed materials used to market the training.
- (11) Evaluation used to assess participants' satisfaction with the training.
- (12) Sample certificate of attendance/participation, which shall include:
 - (i) Name of participant.

- (ii) Title of training.
- (iii) Date of training.
- (iv) Length of training (2 or 3 hours).
- (v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.
- (vi) Statement affirming the participant attended the entire course.
- (13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.
- (c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's website and the Board's website.

* * * * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PHYSICAL THERAPY
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7134

December 9, 2020

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Physical Therapy
16A-6518: Child Abuse Reporting Requirements

Dear Chairman Bedwick:

Enclosed is a copy of a proposed rulemaking package of the State Board of Physical Therapy pertaining to Child Abuse Reporting Requirements.

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 "Cynthia L. Potter".

Cynthia L. Potter, PT, DPT, Chairperson
State Board of Physical Therapy

CLP/tmd:aaw
Enclosure

cc: K. Kalonji Johnson, Acting Commissioner of Professional and Occupational Affairs
Kraig R. Kiehl, Deputy Secretary of Regulatory Programs
Marc Farrell, Deputy Director of Policy, Department of State
Cynthia Montgomery, Deputy Chief Counsel, Department of State
Jacqueline A. Wolfgang, Regulatory Unit Counsel, Department of State
Thomas M. Davis, Counsel, State Board of Physical Therapy
State Board of Physical Therapy

Stephen Hoffman

From: Bulletin <bulletin@palrb.us>
Sent: Wednesday, December 9, 2020 8:51 AM
To: Worthington, Amber
Cc: Adeline E. Gaydosh
Subject: [External] Re: DELIVERY Proposed Rulemakings 16A-6518 & 16A-6326

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.
Good morning Amber!

Thank you for sending these. They will both be published in the 12/19 issue of the *Pennsylvania Bulletin*.

Have a wonderful day!

Adeline

From: Worthington, Amber <agontz@pa.gov>
Sent: Wednesday, December 9, 2020 8:24 AM
To: Bulletin <bulletin@palrb.us>
Subject: DELIVERY Proposed Rulemakings 16A-6518 & 16A-6326

Please acknowledge receipt of delivery of the attached Proposed Rulemakings for Publication.

Thanks,

Amber Worthington, PLS | Supervising Legal Assistant
Department of State | Counsel Division Legal Office | Clerical Supervisor 2
2601 North Third Street, P.O. Box 69523
Harrisburg, PA 17106-9523
Phone: 717.783.7200 | Fax: 717.787-0251
www.dos.pa.gov

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