COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

DEPARTMENT OF PUBLIC WELFARE REGULATION NO. 14-436

VOLUNTEER COMMUNITY SERVICE; GENERAL ELIGIBILITY REQUIREMENTS

JULY 16, 1997

We have reviewed this proposed regulation from the Department of Public Welfare (DPW) and submit for your consideration the following objections and recommendations. Subsections 5(d) and 5(e) of the Regulatory Review Act (71 P.S. §§ 745.5(d) and (e)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, clarity, reasonableness and need. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Statutory authority for recognizing volunteer community service as meeting the work requirement under Act 35.

Section 442.1 of Act 35 of 1996 (Act 35) lists the eligibility requirements for a person to be considered medically needy. These requirements include 100 hours of employment per month earning at least minimum wage. The volunteer community service provisions in the proposed regulation are not on the list of requirements to qualify for Medically Needy Only Medical Assistance (MNO-MA) in Act 35. Consequently, it appears Act 35 does not give DPW the statutory authority to permit volunteer community service to meet the work requirements of Act 35 for MNO-MA. To address this concern, we believe a change to the Welfare Code would be appropriate.

2. Clarity, reasonableness of, and statutory authority for the requirement that community service be performed through a municipality or a Section 501 nonprofit organization.

Section 141.81(i)(1) requires that community service be performed through a municipality or a nonprofit organization that qualifies as tax-exempt under Sections 501(c)(3) or (4) or (d) of the Internal Revenue Code (Community Service Agency) (26 U.S.C.A. § 501(c)(3) or (4) or (d)). In their comments, Senator Hardy Williams, Community Legal Services, Inc. (CLS) and the City of Philadelphia (City) question the term "municipality." CLS notes that the term is undefined in the regulation, and therefore, it is unclear if it includes all forms of local government. CLS and the City note that there are several local government and quasi-governmental entities that may be excluded from the term "municipality," but would offer possibilities for community service placements such as schools, housing authorities, parks and libraries. The commentators further question why government placements should be limited to localities, when there may be opportunities at the state and federal government level.

We agree with the commentators that the use of the term "municipality" is unnecessarily limiting. We note that Section 402 of Act 35 provides the following definition of "community service:"

> 'Community service' means nonpaid work for a unit of Federal, State or local government or a nonprofit organization arranged by the cash assistance recipient. The organization receiving the work must agree to report to the appropriate county assistance office regarding the number of hours worked per week by the cash assistance recipient.

The definition in Act 35 is used in reference to cash assistance recipients. However, it provides guidance on the types of organizations which can offer community service placements. It is clear from this definition that the General Assembly intended to allow placements in local, State or Federal offices to qualify as community service. Consequently, we recommend that DPW delete "municipality" from Section 141.81(i)(1) and replace it with "unit of Federal, State or local government."

CLS and Senator Williams also oppose the requirement that a nonprofit organization be qualified as tax-exempt under Sections 501(c)(3) or (4) or (d) of the Internal Revenue Code. CLS points out that many organizations remain unincorporated due to the time and costs associated with incorporation or because there is no need for incorporation. Senator Williams comments that the tax-exempt status requirement is inconsistent with the legislative intent of Act 35.

We agree with the commentators that DPW has not justified the need for this requirement. The definition of "community service" in Act 35 simply references a "nonprofit organization" and makes no reference to the Internal Revenue Code. Provided that the community service placement in a nonprofit organization meets the criteria in Section 141.81(i)(2) of the proposed regulation, we see no need for the tax-exempt status requirement. Furthermore, we have found no directive in Act 35 which authorizes this requirement. We recommend that DPW delete this requirement from the final-form regulation.

3. Need for and reasonableness of requiring community service be limited to tasks normally performed by a paid employee earning at least minimum wage.

Sections 141.81(i)(2) and (3) require that eligible volunteer community service be limited to tasks that would usually be performed by paid employees of the organization earning at least minimum wage, if there were sufficient funds to pay for the work. We question the need for and reasonableness of these requirements. DPW has not explained why the tie-in to paid employees is necessary or beneficial. Furthermore, these requirements could discourage organizations from hiring paid employees to perform tasks that could be performed by a volunteer. This results in direct conflict with the anti-displacement provisions in the regulation. We recommend that these requirements be deleted from the final-form regulation, unless DPW can provide compelling reasons to maintain the requirements related to tasks usually performed by paid employees.

4. Need for a grievance procedure to address violations of anti-displacement provisions.

The proposed regulation includes numerous anti-displacement provisions in Section 141.81(i)(2)(vii) - (xi). Six commentators recommended that DPW include a grievance procedure to address violations of the anti-displacement provisions in the final-form regulation. We agree with the commentators. The anti-displacement provisions are designed to ensure that community service placements are not made at the expense of paid employees. However, the regulation contains no grievance procedure for a person who alleges he or she has been harmed due to a violation of the anti-displacement provisions. To ensure these provisions are effective, we recommend that DPW include a grievance procedure in the final-form regulation. Furthermore, we encourage DPW to establish advance notice procedures in an attempt to avoid conflicts before they result in the initiation of grievances. To accomplish this, we recommend that DPW consider requiring an organization to provide its collective bargaining units with notice of its intent to fill a volunteer position prior to offering the community service placement.

5. Burden of reporting requirements.

Section 141.81(i)(5) lists eight "assurances" from the community service agency which the individual must provide to DPW relating to: the hours worked; the health and safety of working conditions; and the avoidance of displacement of paid employees. CLS noted that DPW could prepare one form listing all the assurances which the community service agency could sign. A single report form would ease the reporting burden on community service participants and would result in DPW receiving consistent information relating to the assurances in Subsection (5). We recommend that DPW develop a report form prior to promulgation of its final-form regulation.