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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 3, 1999

Charles F. Wynne, Director
Pennsylvania Emergency Management Agency
2605 Interstate Drive
P. O. Box 3321
Harrisburg, PA 17105

Re: IRRC Regulation #30-53 (#2021)
Pennsylvania Emergency Management Agency
9-1-1 Performance Review and Quality Assurance Standards

Dear Mr. Wynne:

Enclosed are our Comments on your proposed regulation #30-53. They are also available on our website at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact John Jewett at 783-5475.

Sincerely,

Robert E. Nyce
Executive Director

REN:keg
Enclosure
cc: Mark Goodwin
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY REGULATION NO. 30-53

9-1-1 PERFORMANCE REVIEW AND QUALITY ASSURANCE STANDARDS

JUNE 3, 1999

We have reviewed this proposed regulation from the Pennsylvania Emergency Management Agency (PEMA) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. §§ 745.5a(h) and (i)) 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, fiscal impact, reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 120d.104. Standards and procedures for performance review. – Fiscal impact, Reasonableness and Clarity

Quality assurance review

In Section 120d.102, the term *Quality assurance review* is defined. However, PEMA uses the term *audit* when referencing a quality assurance review in Section 120d.104. For consistency and clarity, the term *quality assurance review* should be used in place of *audit*.

The use of the word “standard” in the title of this section is unclear. This section does not indicate what standards or performance criteria are to be used in the quality assurance reviews. The regulation should include specific performance criteria that the quality assurance reviewer will use when examining other employees’ work. If the reviewer is to use the criteria or standards in Section 120d.105, then Section 120d.104 should reference Section 120d.105.

Content requirements or recommendations for quality assurance reviews

The last sentence in Subsection (a) provides, “It is also recommended that all incidents involving catastrophic loss be included in the review process.” The phrase “It is also recommended” is inappropriate regulatory language because it does not convey a definitive standard. If incidents related to catastrophic loss will be required to be part of the review, this phrase should be removed from the regulation. If it will not be a requirement, the whole sentence should be deleted.

Dispatching

Subsection (b) requires dispatching “the appropriate police, fire or emergency medical services within the prescribed timeframe (usually within 90 seconds of obtaining pertinent

information, 90% of the time). This provision, for several reasons, is problematic as to how it will be used for the quality assurance review.

First, the phrase “usually within 90 seconds” is not a definitive standard. PEMA should delete the term “usually.”

Second, it is not clear what the “prescribed timeframe” is for dispatching the appropriate personnel. Will it be 90 seconds or will it be another timeframe? The regulation should clearly define the standard.

Finally, the City of Philadelphia observed, when the volume of calls dictates, they dispatch personnel on a priority basis. If dispatching calls on a priority basis is appropriate, PEMA should amend the regulation to allow such flexibility.

Frequency of call taking audits

Subsection (b) begins by requiring call taking audits to be completed weekly. The subsection later provides that “Although it is recommended that audits be performed on a weekly basis, the quality assurance review process may assume a monthly configuration to accommodate 9-1-1 centers that have personnel or scheduling constraints.” The language “Although it is recommended” is inappropriate and creates confusion as to whether call taking audits should be done weekly. If PEMA is intending to establish an exception to the weekly call taking audit requirement, it should expressly state when the exception will be applicable.

Quality assurance reviewer

Subsection (d) requires the director of each 9-1-1 center to create a quality assurance reviewer position. The quality assurance reviewer is a full-time position and depending upon the size of a 9-1-1 center, there may be more than one at each facility. PEMA did not identify the potential economic impact/cost of mandating this new full-time position or how the establishment of this position is the most cost-effective measure to ensure quality assurance. PEMA should conduct this analysis to ensure the creation and use of a quality assurance reviewer is cost effective.

The second sentence in Subsection (d) provides that “It is recommend that the reviewer be a supervisory level with a minimum of 3 years experience in the field of emergency telecommunications.” Again, the phrase “It is recommended” does not convey a definitive standard. The regulation should specify the minimum qualifications for a quality assurance reviewer.

Retention of audit reviews

Subsection (e) requires audit reviews to be kept for 3 years at the 9-1-1 center. Commentators expressed concern that recorded 9-1-1 calls will be included as part of the audit review and thus subject to Pennsylvania’s Right To Know Law. PEMA’s proposed Regulation #30-51 includes a new Subsection 120b.103(11). The new subsection states that a county plan will be considered a public record under the provisions of the act known as the Right to Know Law (65 P.S. §§ 66.1 – 66.4).

Commentators express concern that recorded 9-1-1 calls may be included in audits conducted for performance reviews. The commentators believe that the audits may be included in the plan, resulting in the recorded 9-1-1 calls becoming part of a public record.

It is our understanding that PEMA does not intend to require recorded phone calls to be part of the audit review. In addition, the Pennsylvania Supreme Court issued a decision on this issue earlier this year. In *North Hills News Record v. Town of McCandless*, 722 A.2nd 1037 (1998), the Supreme Court ruled that tapes of 9-1-1 calls are not “public records” under the provisions of the Right to Know Law. To insure consistency with this recent ruling of the Supreme Court, PEMA should state that transcripts or recordings of 9-1-1 calls are **not** “public records” pursuant to the Right to Know Law.

We also question the need for the 9-1-1 center to retain the audits for three years. PEMA should provide justification for this retention period or reduce it.

Quality assurance actions

Subsection (h) provides that *quality assurance actions* that are initiated in response to the results of an audit review will be documented and included as part of the audit. PEMA should define what *quality assurance actions* are, who is responsible for initiating the actions, and when the actions will be imposed.

2. Section 120d.105. Types of quality assurance reviews. – Statutory authority and Clarity

Call taker performance review

Subsection (a)(8) requires the quality assurance reviewer to consider the *professional demeanor* of the call taker. The term *professional demeanor* lacks objectivity. Other standards listed in this subsection are also very subjective and provide a reviewer with a great deal of discretion in evaluating performance. PEMA should consider including more objective criteria to be used by the quality assurance reviewer to determine if the call taker is acting in a professional manner. This comment also applies to Subsection (b)(8) for dispatchers.

Federal Communication Commission rules

Subsection (b)(8) provides that the telecommunicator shall abide by applicable Federal Communications Commission (FCC) rules and regulations. Instead of the general reference, specific citations to FCC regulations should be included.

Emergency medical dispatch program

Subsection (c) requires the Department of Health to approve the emergency medical dispatch program as a requisite to its use by the 9-1-1 emergency communications center. There is no current requirement for the Department of Health to review this program. Furthermore, PEMA lacks the authority to impose such a mandate on another administrative agency. Accordingly, this provision should be deleted.

PEMA itself has the authority to approve medical dispatch programs for 9-1-1 centers. If it decides that standards are needed, it can develop its own or can reference standards developed or approved by organizations with the appropriate expertise or qualifications.

3. Quality assurance reviews and “remote dispatch points” - Statutory authority, Fiscal impact, Implementation procedures and Clarity

A commentator questioned whether this regulation will apply to the staffs of “remote dispatch points” (RDPs). RDPs include local police units, private ambulance services or local fire companies. PEMA staff stated that RDPs will be expected to comply with this regulation because they are part of the “9-1-1 system.” However, they indicated that they may need to amend the regulation to include RDP personnel.

RDPs and 9-1-1 centers have a vital relationship. Calls to a 9-1-1 center for emergency assistance can be transferred to RDPs where a dispatcher determines the appropriate response and dispatches equipment and personnel. Dispatchers at RDPs are not necessarily employees of a 9-1-1 center. The relationship between 9-1-1 centers’ quality assurance review programs and RDP employees is unclear.

Act 17 gives PEMA broad authority and discretion in the development and operation of the 9-1-1 system. Section 2 of Act 17 (35 P.S. § 7012) contains definitions for “911 emergency communication system” or “911 system” and “public safety answering point.” However, the words “remote dispatch point” do not appear in Act 17. PEMA’s goal is to improve 9-1-1 systems and the response of police, fire, ambulance and medical services to emergencies. This goal is understandable and worthwhile. However, PEMA should explain its statutory authority in implementing quality assurance standards for RDP employees who are not employed by 9-1-1 centers and are not included in county 9-1-1 plans.

Comments from the Pennsylvania State Association of Township Supervisors dated May 28, 1999, and the Berks County Communication Center also raise a number of other important questions concerning the application of this regulation to RDPs. What is the responsibility of 9-1-1 centers in auditing or performing quality assurance reviews of RDPs employees’ performance? Will 9-1-1 center quality assurance reviewers have access to tape recordings of RDPs’ calls and dispatches? RDPs may be eligible for funding via the county 9-1-1 plans but only at the discretion of the counties. How many RDPs are currently included in county 9-1-1 plans?

PEMA should review these questions and explain its positions for inclusion with the final-form regulation. Including representatives of local governments and RDPs in the discussion along with 911 centers would probably improve the final-form regulation.