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Senate of Pennsylvania

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APPOINTMENTS

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HUMAN RESOURCE INVESTMENT
COUNCIL

September 28, 1999

Hon. John R. McGinley, Jr., Chair
Independent Regulatory Review Commission
333 Market St., 14th Floor
Harrisburg, PA 17101

Original: 2062
McGinley
Copies: McGinley
Bush
Coccodrilli
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Re: Regulation #14-446
Department of Public Welfare
Omnibus Amendments - TANF/GA/MA Programs
Final-Omitted

RECEIVED
1999 SEP 28 AM 11:46
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Mr. McGinley:

I submit the following comments in my capacity as Minority Chair of the Senate Public Health & Welfare Committee. This final-omitted regulation violates the statutory authority granted to the Department of Public Welfare (DPW) in Acts 1995-20 and 1996-35 to promulgate final-omitted regulations and fail to conform to the intention of the General Assembly in the enactment of those two acts.

Specifically, the promulgation of this regulation as a final-omitted regulation is in direct conflict with language found in both Acts 1995-20 and 1996-35. In Act 1995-20, the General Assembly included the following as §12:

Section 12. It is the intent of the General Assembly that the Department of Public Welfare promulgate final-form regulations which omit notice of proposed rulemaking for the purpose of revising regulations implementing sections 443.1, 443.3 and 443.4 of the act. These regulations shall be submitted before September 1, 1995. This section shall expire September 1, 1995.

It is important to note that sections 443.1, 443.3 and 443.4 of the act, i.e. the Public Welfare Code, were not amended by Act 1995-20. Nonetheless, the General Assembly granted what it obviously believed was an exception to the general rule that DPW must promulgate

regulations as proposed rulemakings, not final-omitted regulations. DPW, in this regulation, has decided to grant unto itself another exception and "promulgate final-form regulations which omit notice of proposed rulemaking for the purpose of revising regulations implementing [other] sections" of Act 1995-20.

Similarly, §21 of Act 1996-35 reads:

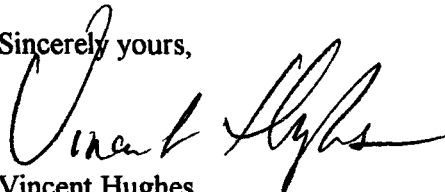
Section 21. The Department of Public Welfare shall promulgate final-form regulations which omit notice of proposed rulemaking for the purpose of implementing sections 405.1, 405.3, 408, 432.3, 432.6 and 432.7 of the act. These regulations shall be submitted to the Legislative Reference Bureau for publication no later than December 18, 1996. This section shall expire December 19, 1996.

The legislative intent here is even clearer and more focused than in Act 1995-20. Here, the General Assembly has enumerated certain sections of Act 1996-35 itself. It has granted exceptions to DPW to promulgate final-form regulations which omit notice of proposed rulemaking for those listed sections. The regulation under review does not implement any of the specifically enumerated sections. It is clear that the General Assembly expected DPW to implement all of the other sections of Act 1996-35 by proposed rulemakings. DPW has exceeded its statutory authority by promulgating final-omitted regulations implementing sections other than sections 405.1, 405.3, 408, 432.3, 432.6 and 432.7.

I also object to DPW's decision, in §§177.21(a)(11) and 178.165 of this final-omitted regulation, to limit the availability of education savings accounts to General Assistance (GA) consumers only. Act 1994-49 does not limit its applicability to GA only. As such, DPW has promulgated a regulation which violates the statutory authority granted to the Department of Public Welfare (DPW) in Act 1994-49 and fails to conform to the intention of the General Assembly.

For these reasons, I strongly recommend that this regulation be disapproved by the Independent Regulatory Review Commission. Thank you for your consideration.

Sincerely yours,



Vincent Hughes
Minority Chair

Public Health & Welfare Committee

cc: Secretary Houstoun
Sen. Mowery

VH/ns