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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES:

AGING AND YOUTH
MAJORITY CHAIRMAN
EDUCATION
POLICY

BOARD OF GOVERNORS
STATE SYSTEM OF HIGHER EDUCATION

August 28, 2000

Honorable Richard Browdie
The Secretary
PA Department of Aging
5th Floor, Forum Place
Harrisburg, PA 17101-1919

Dear Secretary Browdie:

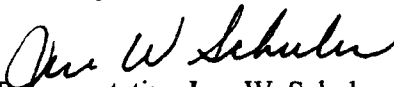
On behalf of the House Aging and Youth Committee, we appreciate the opportunity to offer comments on the August 14, 2000 draft proposed Older Adult Protective Services regulations. This committee has worked diligently on elder abuse issues for the past several sessions and we are pleased to have input in this effort.

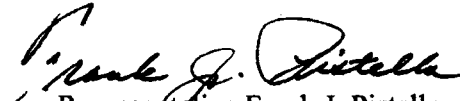
As you know, our respective staffs met on several occasions to discuss this draft proposal. It is our understanding, however, that certain agreements which had been reached at those meetings have not been adequately incorporated into this current draft. In addition, following careful review of the draft, we have identified concerns that must be addressed in order to ensure that the regulations reflect the legislative intent of the statute.

Please review the enclosed comments/questions/recommendations and provide us with the department's response to these issues. We particularly encourage your staff to re-visit those areas which we have identified to be in direct conflict with the enabling statute.

Thank you, in advance, for your attention to this matter. We look forward to continuing to work with you and your staff in the best interest of care dependent older Pennsylvanians.

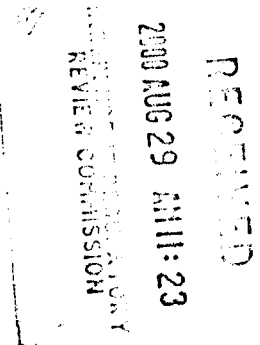
Sincerely,


Representative Jere W. Schuler
Majority Chairman


Representative Frank J. Pistella
Minority Chairman

enclosure

cc: All Committee Members
Honorable Feather O. Houstoun
IRRC Chairman and Members
Rep. John M. Perzel
Rep. William DeWeese
Rep. Don Snyder
Rep. Mike Veon



*Chapter 15 Protective Services for Older Adults
Proposed Regulations (Draft 8-14-00)*

Section 15.2 (Definitions)

In the definitions for “employee,” “home health care agency,” “recipient,” “serious bodily injury,” and “serious physical injury,” the Committee recommends the removal of any language which does not reflect the statute’s definitions for the same terms.

Section 15.21 (General reporting provisions)

In the original proposed regulation #001-017, Committee staff expressed concerns regarding the interaction between the original “environmental factors” language in subsection (b) and the “caretaker” definition, which included facilities. The interaction between this language and definition might have resulted in the inappropriate elimination of cases in facility settings which rightfully should be considered abuse and which should be reported and investigated as such. The Committee appreciates the removal of Section 15.21 (b).

However, the problematic language which appeared in Section 15.21 was reinstated in subsection (ii) of the “abuse” definition. In meetings with the Department of Aging’s representatives, Committee staff indicated that the interaction between “environmental factors” language in subsection (ii) of the “abuse” definition and the definitions of “serious bodily injury” and “serious physical injury” raised the same concerns as were previously raised with regard to Section 15.21. As a result, it was agreed that the phrase, “resulting from abuse and neglect,” would be removed from the definitions of “serious bodily injury” and “serious physical injury.” **The Committee again recommends the removal of this phrase from both definitions and reemphasizes its recommendation that both definitions should simply reflect the statute’s definitions.**

Section 15.22 (Safeguards for those who make or receive reports)

New language in the proposed subsection (d) requires administrators to post notices to notify employees and residents of protections and obligations under the Act. **The Committee recommends the addition of language requiring that the notice be posted in a conspicuous and accessible location.**

Section 15.132 (Employee requirements)

The language proposed in (1) and (2) does not comply with the law. The proposed (1) inappropriately fails to include individuals serving as administrators and operators on or after July 1, 1997. In addition, the proposed (2) inappropriately fails to include employees hired on or after July 1, 1997. Omitting these individuals violates the Older Adult Protective Services Act’s (OAPSA) existing requirements regarding who must submit criminal history record information. **To ensure compliance with the statute and with legislative intent, which prioritized the safety of residents and consumers, the Committee strongly recommends the reinstatement of the language included in the proposed regulation #001-017’s subsections (a)(1), (a)(3), and (4)(i). Reinstatement of this language is necessary to ensure full compliance with sections 502, 503, 506, and 508 of the OAPSA.**

Section 15.133 (Facility responsibilities)

The Committee staff understood that the Department intended to remove language in subsections (a) and (b) outlining certain crimes which would not prohibit facilities from employing someone convicted of those crimes. **The Committee recommends the removal of this language.**

The proposed regulation removes subsection (c) regarding arrests for crimes and the obligation of facilities to ascertain the ultimate disposition of the arrest. What is the rationale for such a removal? **The Committee recommends the reinstatement of subsection (c).**

The new subsection (h) requires facilities to provide written notice explaining the right and procedure for applicant appeal of the decision not to hire or to terminate employment pursuant to the act and consistent with 18 Pa.C.S. Section 9125. The Committee is unclear regarding which appeal rights in OAPSA or in 18 Pa.C.S. are being referenced by this subsection. Should there also be a reference to Section 15.134(g) and Section 15.135(a) of the regulation?

Section 15.134 (Procedure)

The proposed regulation alters (b)(2). As proposed, the Department of Aging would have *30 working days* instead of 10 working days to get back to the applicant/employee regarding whether their FBI criminal history report permits employment. What is the rationale for this alteration?

The proposed regulation removes language in (b)[d](3) regarding arrests for crimes and the obligation of facilities to ascertain the ultimate disposition of the arrest. What is the rationale for such a removal? **The Committee recommends the reinstatement of subsection (b)(3).**

Section 15.136 (Provisional hiring)

In subsection (d), should the reference to Section 15.137 instead be a reference to Section 15.136?

Section 15.146 (Restrictions on employees)

The proposed regulation alters (a) and (b). As proposed, a facility must develop and implement a plan of supervision when abuse by an employee is alleged within *72 hours* rather than doing so immediately. Submission of the plan to the licensing agency must be within *72 hours* rather than immediately. **To ensure compliance with section 704(a) of the OAPSA and to ensure that the safety of residents remains the priority, the Committee recommends the reinstatement of the original proposed requirements regarding immediate implementation of a plan of supervision and immediate submission of the plan to the licensing agency.**

Section 15.148 (Penalties)

The proposed regulation alters (c). As proposed, the area agency on aging must notify the police within *72 hours*, rather than doing so immediately, if the agency learns of a person's

refusal to complete all abuse reporting requirements. **The Committee recommends the reinstatement of the original proposed standard of immediate notification.**

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REVIEW COMMISSION