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

January 28, 2000

Honorable Richard Browdie, Secretary  
Department of Aging  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101

Re: IRRC Regulation #1-17 (#2077)  
Department of Aging  
Protective Services for Older Adults

Dear Secretary Browdie:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for 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 would like to discuss these Comments, please contact Mary Lou Harris at 772-1284.

Sincerely,

Robert E. Nyce  
Executive Director

REN:kcg  
Enclosure  
cc: Jeffrey J. Wood  
Office of General Counsel  
Office of Attorney General  
Lee Ann Labecki

**COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION**

**ON**

**DEPARTMENT OF AGING REGULATION NO. 1-17**

**PROTECTIVE SERVICES FOR OLDER ADULTS**

**JANUARY 28, 2000**

We have reviewed this proposed regulation from Department of Aging (Department) 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 in determining whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, fiscal impact, consistency with the statute, reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

**1. Section 15.1. Scope and authority. – Statutory authority and Clarity.**

*Subsection (a)*

This subsection provides that this Chapter applies to protective services for “older adults.” However, provisions added to the Department’s regulations at Sections 15.141 – 15.149, under the heading “Reporting Suspected Abuse” apply to all individuals regardless of age. Under “Scope and authority,” the Department should add a provision to clearly state the broader application of Sections 15.141 – 15.149.

*Subsection (b)*

This subsection states: “This chapter applies to the Department (of Aging), the Pennsylvania Department of Health (Health), the Pennsylvania Department of Public Welfare (DPW).”

Section 10225.504 of the Older Adult Protective Services Act (Act) (35 P.S. § 10225.504) states: “The Department, **in consultation with** the Department of Health and the Department of Public Welfare, shall promulgate the regulations necessary to carry out this chapter.” (Emphasis added.)

Section 10225.708 of the Act states: “The Department (of Aging), **the Department of Health and the Department of Public Welfare** shall promulgate the regulations necessary to carry out this chapter” (relating to reporting suspected abuse by employees). (Emphasis added.)

We recognize that the Department is statutorily authorized to consult with Health and DPW or to jointly promulgate regulations with the aforementioned Departments relating to reporting suspected abuse by employees. However, we question the Department’s statutory authority to unilaterally promulgate regulations that apply to Health and DPW.

## **2. Section 15.2. Definitions. – Statutory authority and Clarity.**

### *General*

This section defines twenty-seven terms that are also defined in the Act. Some of the definitions are identical; some are not. The Department should reference the definitions in Section 10225.103 of the Act, rather than reiterate or change the Act's definitions in the regulation.

We object to the definitions of the following terms which differ from the definitions contained in the Act. If the Department does not reference the statutory definitions in the final regulation, it should justify the changes.

### *Abuse and Neglect*

In the regulation's definitions of these two terms, the following sentence, excerpted from the Act's definition of "neglect," has not been included:

"No older adult who does not consent to the provision of protective services shall be found to be neglected solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care."

If the foregoing is not included in the final regulation, the Department should explain the omissions.

### *Caretaker*

The definition of "caretaker" does not include the following sentence from the Act: "It is not the intent of this act to impose responsibility on any individual if such responsibility would not otherwise exist in law." The Department should explain why this sentence was not included in the regulation's definition.

### *Client assessment*

The Department has added the phrase "using the instruments and procedures established by the Department for this purpose." It should explain why this sentence was added. Additionally, what are the "instruments and procedures established by the Department" within this definition?

### *Employee*

The definition replaces the Act's language "to provide care to a care-dependent individual for monetary consideration in the individual's place of residence," with "in the individual's place of residence for a fee, stipend or monetary consideration of any kind." The Department should explain why the statutory language was not used.

The Department should also clarify the meaning of the phrases "direct contact with residents" and "unsupervised access to their personal living quarters."

### *Facility*

The Department includes the phrase, “including those entities licensed as personal care homes who publicly advertise, promote or otherwise hold themselves out to the public as assisted living facilities.” The Department should explain why this phrase was added.

### *FBI*

In existing regulations at Subsection 15.121(b)(2), the full name of the “Federal Bureau of Investigation” is used. New provisions, such as Section 15.131, in this proposed regulation use the abbreviation “FBI.” The regulation should include a definition of “FBI” as meaning the Federal Bureau of Investigation and should use the abbreviation consistently.

### *Home health care agency*

In Subsection (ii) of the definition of “home health care agency,” the Department has included the following additional language:

“The term includes private duty home care providers, homemaker/home health aide providers, companion care providers, registry services, intravenous therapy providers, or any other entity which supplies, arranges for, or refers personnel to provide care for which that entity receives a fee, consideration or compensation of any kind.”

The Department should explain why this language was added. Also, does this definition and the definition of “facility” apply to unlicensed facilities?

### *Protective services*

There are three differences between the definition of the term “protective services” in the proposed regulation and the Act. First, the Department added the phrase “subsequent to an investigation.” Second, the word “detect” was deleted. Third, “and” was replaced by “or” in the list of actions protective services seeks to prevent. In the preamble to the final regulation, the Department should explain why these additions, deletions and substitutions were made.

### *Criminal history record information (CHRI) and Federal Bureau of Investigation national criminal history record check*

Throughout the proposed regulation, the Department uses terms such as “criminal background check,” “criminal history record information,” “clearance,” or “criminal history record information report.” In the situations where these terms are referring to the same document or report, we recommend that the Department use a statutory term consistently. In our Comments on this proposal, we will use the term “CHRI report” or “FBI check” when referring to criminal history record required under Sections 10225.502(1) and (2) of the Act.

**3. Section 15.12. Administrative functions and responsibilities of area agencies on aging. – Clarity.**

*Subsection (b)*

The proposed regulation deletes Paragraph (2) of the existing regulations. We understand that the Department did not intend to delete this section. The Department should restore this paragraph in the final regulation.

**4. Section 15.13. Organization and structure of protective services functions. – Reasonableness.**

*Subsections (b) and (c)(4)*

The proposed regulation deletes Subsections (b) and (c)(4) in the existing regulations. The current language of this subsection prohibits assigning the roles of protective services caseworker and ombudsman to the same person. A protective services caseworker is an investigator and enforcement officer. In contrast, an ombudsman serves as an advocate for older adults by negotiating with facilities on their behalf. Will assigning both roles to the same person create a conflict of interest or undermine their effectiveness in either role? The Department should address this concern.

**5. Section 15.21. General reporting provisions. – Clarity.**

*Subsection (b)*

This subsection contains the phrase “emergency involuntary intervention.” For greater clarity, the Department should consider cross-referencing Section 15.71 (relating to involuntary intervention by emergency court order).

**6. Section 15.25. Report form and content. – Clarity.**

*Subsection (a)*

Subsection (a) requires that an initial report “shall be committed to writing on the standardized report form.” However, the name or reference number of the “standardized report form” is not included or referenced in this section. Is this a reference to the “report of need” form required in 15.24? For clarity, the Department should include the name or reference number of the form in the final regulation.

**7. Section 15.26. Screening and referral of reports received. – Reasonableness and Clarity.**

*Subsection (a)*

This subsection allows “a person” to screen and assign incoming reports. For clarity, the Department should include minimum requirements for a person who is to carry out these duties.

*Subsection (b)*

Subsection (b)(4) of the existing regulation covers reports of an older adult in need of protective services made from outside an agency's planning and service area. This report "shall be referred to the agency which has the designated responsibility for protective services in the planning and service area in which the older person... is located at the time of the report." Is there a mechanism for confirmation and follow-up between the two agencies? The Department should explain.

**8. Section 15.41. Reports required to be investigated. – Clarity.**

*Subsection (a)*

Subsection (a) states: "Where applicable, reports and investigations shall comply with Sections 15.141 – 15.147." When will reports and investigations not have to comply with the aforementioned sections? The Department should explain these situations.

**9. Section 15.42. Standards for initiating and conducting investigations. – Clarity.**

*Subsection (a)(4)*

Subsections (a)(1) and (a)(3) use the term "investigator" to describe the person investigating the report. Subsection (a)(2) uses the term "agency investigator." Finally, Subsection (a)(4) uses the term "protective services caseworker." Are all three positions the same? The Department should either define all three terms, or use one consistently throughout this section.

*Subsection (e)*

What constitutes "interference?" Is there an existing definition for the term? If not, for clarity, the Department should include a definition. Also, the Department should distinguish "interference" from "intervention."

**10. Section 15.45. Situations involving State-licensed facilities. – Clarity.**

*Subsection (a)(4)*

Paragraph (4) includes "In situations where ombudsman services are determined to be appropriate, the agency shall request those services from the ombudsman." What are examples of "ombudsman services?" For clarity, the Department should either give examples of ombudsman services, or provide a cross-reference to state or federal statute and regulations or another source of information on ombudsmen.

*Subsection (c)*

What are the "procedures jointly developed by the Department and the Department of Public Welfare?" Are these procedures published? The Department should reference these procedures in this subsection.

**11. Section 15.61. Access to persons. – Consistency and Clarity.**

**Section 15.81. Rights of protective services clients. – Consistency and Clarity.**

*Subsection (c) (Section 15.61)*

*Subsection (1) (Section 15.81)*

The term “protective services caseworker” is used in Section 15.61(c) while Section 15.81(1) uses the term “protective services worker.” One term should be used consistently throughout the regulation.

**12. Section 15.91. General. – Clarity.**

*Subsection (a)*

Subsection (a) is amended to state that protective services are provided to older adults under the act **subsequent to an investigation.** (Emphasis added.) The final regulation should clarify whether the latter phrase means subsequent to the initiation or the completion of an investigation.

**13. Section 15.93. Service plan. – Clarity.**

*Subsection (d)*

Under the Act, “service plan” is the defined term and should be used consistently throughout the regulation, instead of the terms “service care plan” and “care plan.”

**14. Section 15.95. Case management. – Protection of public welfare and Clarity.**

Subsection (c)(2) provides that a reassessment shall be done before a case “is terminated, transferred or it is the agency’s judgement that a reassessment is appropriate.” The intent of Subsection (c)(2) is unclear and should be reworded. Further, the Department should address whether a reassessment will be made if there is a change in a client’s condition.

**15. Section 15.96. Termination of protective services. – Clarity.**

*Subsection (c)*

In Subsection (c), the requirement that the agency secure, where possible, a signed statement of understanding is deleted. We request the Department explain why the statement will no longer be required.

**16. Section 15.105. Limited access to records and disclosure of information. – Protection of public welfare, Consistency with statute, and Clarity.**

Information in a protective services record may not be disclosed except as provided in this section. To protect the rights of an older adult in protective services, this section should be amended. It should specify that relevant information may be disclosed to a court-appointed guardian, or to an attorney who is providing legal services to the alleged victim.

The Department proposes to amend language in Paragraph (1) which currently reads: "Information may be disclosed to a court of competent jurisdiction or under a court order." (Emphasis added.) We object to the Department's proposed change to delete the word "or" because it is inconsistent with Section 10225.306(a) of the Act.

**17. Section 15.121. Protective services staff qualifications. - Clarity.**

Subsection (b) requires applicants for protective services positions to submit a CHRI report. Applicants who are not Pennsylvania residents are required to obtain a FBI check. The subsection should include or reference the Act's requirement that residency be at least two years.

**18. Section 15.127. In-service training curriculum. - Reasonableness and Clarity.**

This section sets forth an annual training requirement for protective services supervisors and caseworkers. It states that the supervisors and caseworkers will "participate in in-service training in protective services as required by the Department each year." Since this is an annual requirement, the regulation should indicate the minimum hours necessary to meet the Department's requirements.

**19. Section 15.131. Prospective facility personnel. - Consistency with regulations, Reasonableness, and Clarity.**

*Subsection (a)*

First, the beginning sentence of Subsection (a) states that a facility shall require all applicants to submit "criminal history record information, obtained within the one-year period immediately preceding the date of application, as appropriate." The phrase "as appropriate" at the end of this sentence is unnecessary and should be deleted.

Second, this section cites the federal law establishing procedures for obtaining an FBI check, but does not explain the Department's role in this procedure. We recommend adding a cross-reference to Section 15.134 relating to the procedures for obtaining a FBI check.

*Subsection (b)*

Subparagraph (b)(6) indicates that "records of contacts with public or private social agencies" will be considered as reasonable proof of residency. The Department should explain what types of documents are being considered and how these records could be used as proof of residency.

**20. Section 15.132. Facility personnel requirements. - Consistency with statute, Reasonableness, and Clarity.**

This section describes the facility personnel who are required to submit CHRI reports.

*Subsection (a)*

Several of our concerns involve inconsistencies with the Act. Sections 10225.502(a) and 10225.503(a) of the Act place responsibility for obtaining and using CHRI reports on the facilities. Section 10225.502(a) of the Act states that a facility shall require all applicants,



administrators and operators to submit CHRI reports. Under Section 10225.503(a), a facility cannot hire an applicant or retain an employee if that person's CHRI report indicates that he has been convicted of any offense listed in Section 10225.503(a). Hence, the Act places the responsibility on the facility to implement the CHRI report requirement.

In contrast, Subsection (a) of the regulation lists the facility personnel who are required to submit CHRI reports. How and when will employees be notified of the CHRI report requirement? This section should require that facilities notify current facility personnel verbally in a language understood by the employee, as well as in writing. The notice should include a reference to Sections 15.135 and 15.136 relating to the rights of applicants and employees to review and challenge the accuracy of their CHRI reports.

Second, Subsection 15.132(a)(2) gives facility administrators and operators 90 days after the date of employment to comply with the CHRI report requirement. This provision is inconsistent with the requirements of Section 10225.506 of the Act. Only non-resident employees have 90 days to comply with the requirement. Employees, including operators and administrators, who are Pennsylvania residents have only 30 days to comply with the requirement. We object to this inconsistency. This subsection must be revised to reflect the statute.

In addition, this subsection is directed at administrators and operators "who began serving as administrators and operators after July 1, 1998." The rest of the section relates to **current** facility personnel. Section 15.132(a)(2) should be moved to Section 15.137 (relating to provisional hiring).

Third, Section 15.132(a)(5) addresses facility employees that provide services in other facilities. An example is an employee of a home health care staffing agency who is assigned to care for older adults at a long-term care nursing facility. The regulation should clarify which facility is responsible for notifying these employees of the CHRI report requirement.

Another minor clarity issue is the use of the term "the agency" in this subsection. Is this a reference to the home health care staffing agency or the local provider of protective services as indicated in the definition of "agency" in Section 15.2?

#### *Subsection (b)*

Section 15.132(b) states that employees are responsible for determining whether they are required to obtain a CHRI report. This subsection adds that if an employee fails to comply with this section, the facility cannot be held liable for failure to inform the employee of obligations under this section.

In contrast, Section 10225.502(a) of the Act directs facilities to require that applicants and employees submit CHRI reports. Section 10225.503(a) states that facilities cannot hire or retain individuals if their CHRI reports indicate convictions of one or more of the listed offenses.

Subsection (b) is inconsistent with the Act. We object to this inconsistency. This provision should be deleted or replaced with language that requires facilities to implement the CHRI report requirement and to notify applicants and employees of the CHRI report requirement.

In addition, there is a question regarding the application of the CHRI report requirement to certain employees. There are two aspects to this question. First, Section 10225.502(a) of the Act states that it only applies to operators and administrators who have direct contact with clients. Those who do not have direct contact are exempt. Does the exemption apply to other employees who do not come into contact with the older adult clients?

Finally, the Act's definition of "facility" covers certain entities designed to care for older adults or care-dependent individuals. Large hospitals may be licensed as a long-term facility but only a portion of the hospital or one floor provides long-term care (LTC). Many of the facility's employees may not work in the LTC area of the facility. The regulation should clarify that the CHRI report requirement does not apply to employees who work for a facility that has a LTC component if the employees do not work in or do not have access to the LTC component and are not in direct contact with the older adults in that component.

**21. Section 15.133. Facility responsibilities. - Consistency with statute, Reasonableness, and Clarity.**

*Subsection (c)*

This subsection addresses situations when a CHRI report indicates records of arrests but no final decision or sentencing by the court, or no offense code or grading of the offense. The subsection contains a time limit of 60 days for the applicant or employee to obtain court documents showing disposition. Failure to provide these documents would result in a prohibition against hiring the applicant or retaining the employee.

Section 10225.503(a) of the Act prohibits employment due to a "conviction" but not an "arrest." We question why employment would be denied when an applicant or employee is unable to obtain the necessary court papers within a certain time period. We recommend that the Department delete the reference to the 60-day period. The same concern also applies to Subsection 15.134(b)(3) (relating to FBI checks).

*Subsection (d)*

This subsection states that a facility may not hire an applicant or retain an employee when the CHRI report indicates "conviction of a Federal or out-of-state offense similar in nature, as determined by the Department, to those listed in Subsections (a) and (b)." This language is vague. When and how will the Department make determinations concerning the similarity of offenses? The regulation should include the procedures for this determination process and provide for an appeal process.

*Subsection (f)*

This subsection requires facilities to ensure that the information obtained from the CHRI reports remains confidential and is used solely to determine an applicant's eligibility for employment. Facilities must also be required to ensure confidentiality for current employees.

*Subsection (i)*

Subsection (i)(2) allows for the exchange of an employee's CHRI report between two different facilities "when necessary." In what circumstances would this be necessary? Sections 502 and 503 of the Act direct a facility as an employer or prospective employer to review a worker's CHRI report. It does not make one facility responsible for workers employed by another. If any CHRI reports are to be exchanged between facilities, then these facilities should be directed to maintain and protect confidentiality of the information.

A separate issue is the responsibility of facilities for employees who were not required to submit a CHRI report or who, when they were hired, had no criminal record but are later convicted of one of the listed offenses. Section 10225.503(a) of the Act states that an employee cannot be retained once he is convicted of one of the listed offenses. How will a facility become aware of convictions of current employees?

**22. Section 15.134. Procedures. - Reasonableness and Clarity.**

*Subsection (e)*

The second sentence of this subsection includes the phrase "within the time limits required for submitting criminal checks." To which time limits is this phrase referring? The same sentence also states that employees will "provide Pennsylvania and FBI checks obtained no longer than one year prior to their date of submission." The Department should clarify the inconsistencies in this subsection.

*Subsection (f)*

Subsection (f) states that applicants and facility personnel are responsible for reviewing all CHRI reports for accuracy. There are two concerns. First, are facility personnel responsible for reviewing their own CHRI reports and are they also responsible for reviewing the CHRI reports pertaining to applicants? If facility staff must review applicants' CHRI reports, which facility personnel will be allowed access to applicants' CHRI reports?

The second issue is access to the FBI check. There is no provision in this section for access by applicants to their own FBI check. The regulation should inform applicants on how and when they can review their FBI check for accuracy. For example, federal regulations at 28 CFR Section 50.12 require state officials using FBI records to provide the subject of the records with the opportunity to challenge the accuracy of the information.

Third, Section 9125(c) of the Criminal History Record Information Act (CHRI Act) (18 P.S. § 9125(c)) requires an employer to notify the applicant in writing if the decision not to hire the applicant is based in whole or in part on the CHRI report. This statutory requirement should be referenced in the regulation. In addition, current employees should receive similar notice if and when their termination is based in whole or in part on their CHRI reports.

*Subsection (g)*

This subsection states that applicants and facility personnel may question the Department's determination. Greater detail is needed in Subsection (g) regarding the process to "question" or appeal the Department's determination.

**23. Section 15.135. Applicant rights of review. – Reasonableness and Clarity.**

Subsections (b) and (c) appear to be unnecessary. Subsection (a) explains the rights of applicants to review their CHRI reports and challenge their accuracy under state law. It references portions of the CHRI Act. The provisions of Subsections (b) and (c) are addressed in the CHRI Act. Subsections (b) and (c) should be deleted and a reference to Section 9125 of the CHRI Act (18 P.S. § 9125) should be added to the CHRI Act citations already in Subsection (a).

**24. Section 15.136. Facility personnel rights of review and appeal. - Consistency with regulations, Reasonableness, and Clarity.**

This section references the CHRI Information Act and its procedures for challenging the accuracy of a state CHRI report. It should also reference the federal procedures for challenging the accuracy of FBI checks.

**25. Section 15.137. Provisional hiring. - Reasonableness and Clarity.**

This section sets forth procedures for the provisional hiring of applicants who have applied for, but not received, their CHRI reports. Subsection (a)(5)(ii) states that a provisionally employed applicant will receive "regular supervisory observation." The regulation should clarify how and when a facility and its staff should observe and supervise a provisionally hired applicant.

**26. Section 15.138. Violations. - Clarity.  
Section 15.148. Penalties - Clarity**

Section 15.138(a)(4) uses the words "Commonwealth agencies" and "these agencies." Is the phrase "these agencies" referring to local providers of protective services as stated in the definition of the term "agency" in Section 15.2? If not, the phrase "these agencies" should be clarified. The same question also applies to Section 15.148(a)(4).

**27. Section 15.141. General requirements. - Reasonableness and Clarity.**

This section sets forth provisions for reporting suspected abuse. Subsection (a) requires an immediate oral report to the agency as well as a written report. There should be a reference to Section 15.143 that sets forth the content requirements for the written report.

**28. Section 15.143. Contents of reports. - Clarity.**

Subsection (a) requires that the mandatory written reports be made on forms supplied by the Department. It also states that the Department will provide facilities with initial supplies of the forms. How and when do facilities receive these supplies? The regulation should inform facilities and individuals about how to obtain copies of the forms.

**29. Section 15.144. Reports to Department and coroner by agencies. - Clarity.**

When employees or administrators have a reasonable cause to suspect that a recipient died as a result of abuse, Subsection (b) requires an agency to forward a copy of the written report to the “appropriate coroner” within 24 hours. Who is the “appropriate coroner”? Is it based on the county where the death occurred or where it was reported? The regulation should use the term “county coroner” and identify which coroner is required to investigate.

**30. Section 15.146. Restrictions on employees. – Consistency with statute, Fiscal impact, and Clarity.**

*Subsections (a) and (b)*

Subsection (a) requires facilities to develop and submit their “facility supervision/suspension plans” to the agency and appropriate licensing Commonwealth agency within 90 days of the effective date of this regulation. Subsection (b) provides: “following written approval of plans by the agency and the Commonwealth agency with regulatory authority over the facility, **facilities shall follow these plans in instances involving allegations of abuse by employees.**” (Emphasis added.)

Section 10225.704(a) of the Act requires “upon notification that an employee is alleged to have committed abuse, the facility shall immediately implement a **plan** of supervision.” The plan is in connection with each **individual** instance of notification that an employee is alleged to have committed abuse. However, it does not require advance submission of general, master plans by the facilities. What is the need or purpose of requiring facilities to file plans under Section 15.146(a) before any specific allegations are made?

Another concern is the cost for agencies. Depending on the region, there could be a large number of facilities within an agency’s service area. These facilities include long-term nursing facilities, personal care homes, home health care agencies and older adult daily living centers. Neither the Preamble nor the Regulatory Analysis Form for this regulation contains any information regarding the potential cost of this requirement for facilities, agencies or the Commonwealth. If the Department retains this requirement in the final-form regulation, it should include an assessment of the costs.

We have several additional concerns. This section provides no specific provisions concerning the required content of these plans or the criteria for approval. Other concerns include the lack of any specific time period for review and approval of the plans by the agencies. Who will provide technical assistance to facilities in the development of these plans? In addition, if the facility is a home health care operation, which agency reviews its plan? Is it the agency in the region where the home health care service is based or the agency in the area where the recipient is located?

*Subsection (d)*

Upon notification that an employee is alleged to have committed abuse, this subsection requires that a facility “immediately” implement the plan of supervision or suspension. It also requires that the facility “immediately” submit a copy of the plan to the agency and Commonwealth agency. There is no definition of what is meant by “immediately.” The regulation should clarify, for example, whether “immediately” means within a certain number of hours or before the employee returns to work on his next scheduled shift.

**31. Section 15.147. Confidentiality of and access to confidential reports. - Consistency with statute and Clarity.**

This section establishes standards and procedures for protection of confidential information and its release under certain circumstances. There are three concerns.

First, Subsections (b)(8) and (b)(9) allow for the release of confidential information to the Attorney General, and “to law enforcement officials of any jurisdiction as long as the information is relevant in the course of investigating cases of abuse.” In addition, Subsection (e) mirrors the statute concerning the release of information identifying reporters of suspected abuse (Section 10225.306(b)(4) of the Act). However, the regulation does not mirror the Act in requiring a report of criminal conduct before law enforcement officials may gain access to these records. We object to the inconsistency.

Under the Act’s “confidentiality of records” provisions, law enforcement officials are **only** allowed access to the records if there is a report of criminal conduct. This exemption on the release of confidential records for law enforcement officials is in Section 10225.306(b)(1) of the Act. It reads:

In the event that an investigation by the agency results in a report of criminal conduct, law enforcement officials shall have access to all relevant records maintained by the agency or the Department.

The stipulation requiring “a report of criminal conduct” does not appear in the regulation. This provision is especially important for the protection of the identity of the reporters of abuse. It should be added to Subsections (b) and (e).

Second, a few commentators suggested the regulation provide for sharing of certain information with the ombudsman. Section 10225.303(b) of the Act requires that an ombudsman be notified of an investigation under certain circumstances. In addition, Section 10225.306(b)(2) of the Act provides for limited disclosure of confidential information to service providers. Does the later subsection also provide access for an ombudsman? The Department should explain its position on this issue.

Finally, there appears to be a typographical error in Section 15.147(b)(10). The word “under” in the first sentence is unnecessary and should be deleted.

**32. Section 15.148. Penalties. - Clarity.**

*Subsection (c)*

If an agency learns of a person's refusal to complete all reporting requirements, Subsection (c) requires the agency to notify the police. However, there is no indication of how quickly an agency should notify the police. In addition, there is no guidance as to what constitutes a refusal to report. The regulation should clarify how quickly an agency should notify the police and what constitutes willful refusal.

**33. Section Headings. - Clarity.**

Throughout the regulation, the Department has included section headings for subject areas. Some of the headings are confusing. For instance, "Reporting Suspected Abuse" for Sections 15.141 – 15.149 and "Reporting Suspected Abuse, Neglect, Abandonment or Exploitation" for Sections 15.21 – 15.27 appear to overlap. The Department should reexamine the subheadings for additional clarity.

IRRC #2077 (#1-17)  
DEPARTMENT OF AGING  
Protective Services for Older Adults

Honorable Richard Browdie, Secretary

Aplaka Diallo  
Date: 1/28/00