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

April 20, 2000

Honorable Robert Zimmerman, Jr., Secretary
Department of Health
802 Health and Welfare Building
Harrisburg, PA 17108

Re: IRRC Regulation #10-161 (#2097)
Department of Health
WIC Program

Dear Secretary Zimmerman:

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 James M. Smith at 783-5439.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

wbg
Enclosure

cc: Greg Landis
Lesa Tressler
Office of General Counsel
Office of Attorney General
Lee Ann Labecki

Comments of the Independent Regulatory Review Commission

on

Department of Health Regulation No. 10-161

WIC Program

April 20, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which has not been met. The Department of Health must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by March 20, 2002, the regulation will be deemed withdrawn.

1. Section 1103.2. Probationary certification. - Clarity

There appears to be a typographical error in Subsection (b)(2). The Subsection (b)(2) cross reference to Inadequate Participant Access is cited as Section 1107.3(c)(8). However, Inadequate Participant Access is found at Section 1103.7. Is the correct reference Section 1103.7(c)(8)? If not, please explain.

2. Section 1103.3. Authorization of store slots. - Clarity

Subsection (b) provides that by October 1 of each year the Department will evaluate the WIC participant population to determine store slot allocations per county for each Federal Fiscal Year. Please explain how the public and the industry will be notified of annual changes in store slots.

3. Section 1107.1. Imposition of sanctions. - Consistency with federal regulations and Clarity

New Subsections (b) and (c) both state "...the Department *will give the store the option of paying a civil money penalty in lieu of ...disqualification....*" The parallel portions of 7 CFR section 246.12(f)(2)(xix) and (xx) provide "...the State Agency *shall impose a civil money penalty....*" (Emphasis added) The Department should explain why the language in the regulation differs from the language in the federal regulation.

4. Section 1107.1a. Disqualifications. - Clarity

There are two clarity concerns in Subsection (d). First, in Paragraph (9) the phrase "or with another WIC check for purchases made with a WIC check" is unclear. What circumstance does this phrase address?

Second, Paragraph (14) uses the phrase "within the specified time frame," but does not specifically identify the time frame. Time frames are set forth in Sections 1105.2(f), (g) and 1105.6(f). The

Department should amend Paragraph (14) to clearly specify the time frames that must be met to avoid disqualification, or include a cross reference to Sections 1105.2(f), (g) and 1105.6(f).

5. Section 1107.2. Civil money penalties. - Clarity

There is an inconsistency between Subsection (b)(2) and the Preamble. Subsection (b)(2) begins “For disqualifications identified in Sections 1107.1a(d)(2) - (15),....” The Preamble includes Sections 1107.1a(d)(2) - (16). The Department should make these citations consistent for the final-form submittal.