

Law Center North Central
3638 North Broad Street, Philadelphia, PA 19140
Phone: 215.227.2400, Fax: 215.227.2435
Web Address: www.clsphila.org

2001 MAY 22 PM 4: 00

Louise E. Hayes
Staff Attorney
Direct: 215.227.2400 x2421
Email: L.Hayes@clsphila.org

By fax and by first class mail

REVIEW COMMISSION

May 22, 2001

Hon. Harold Mowery, Jr., Majority Chair
Senate Public Health and Welfare Committee
Senate Box 203031
Harrisburg, PA 17120-3031
Fax: (717) 772-0576

Hon. Dennis O'Brien, Majority Chair
House Health & Human Services Committee
100 Main Capitol Building
Harrisburg, PA 17120-2020
Fax: (717) 787-1339

Hon. Vincent Hughes, Minority Chair
Senate Public Health and Welfare Committee
Senate Box 2030007
Harrisburg, PA 17120-3007
Fax: (717) 772-0579

Hon. Frank Oliver, Minority Chair
House Health & Human Services Committee
34 East Wing
Harrisburg, PA 17120-2020
Fax: (717) 772-2284

David Devries, Esq.
Chief Deputy Attorney General
Office of Civil Law
Strawberry Square
Harrisburg, PA 17120
Fax: (717) 705-7244

James M. Sheehan, Esq.
General Counsel
Commonwealth of Pennsylvania
333 Market St., 17th Fl.
Harrisburg, PA 17101-2210
Fax: (717) 787-1788

Independent Regulatory Review Commission
333 Market St.
Harrisburg, PA 17120
Fax: (717) 783-2664

**Re: Final-Omitted Regulations #14-447
Implementation of TANF / Act 35**

Dear Reviewers of DPW's Final-Omitted Regulations #14-447:

I write in response to the Department of Public Welfare's recent submission to the Independent Regulatory Review Commission, the relevant legislative committees, and the Attorney General of final-omitted regulations #14-447. These are the regulations that have been repeatedly described in the Governor's regulatory agenda as addressing "Act 1996-35, Provisions Effective March 3, 1997." Although CLS will be commenting separately on the substance of the regulations, I write now to object to the Department's circumvention of public comment by issuing these regulations as final-omitted.

Some information on the genesis of these regulations may be helpful. Act 35, the state's welfare reform law, was enacted May 16, 1996. The Act authorized final-omitted rulemaking for several of its key provisions, but stipulated that these regulations be submitted to the Legislative Reference Bureau by December 18, 1996; this approval of final-omitted regulations expired December 19, 1996. The Department of Public Welfare (DPW) did not meet the December 1996 rulemaking deadline, but instead issued a Notice of Rule Change (NORC) on March 1, 1997. This NORC announced rule changes to be effective two days later, on March 3, 1997. It did not contain the text of the actual changes to the Pennsylvania Code, but only described the changes generally. The NORC was to have been in effect for 365 days pending the adoption of final rulemaking, but no regulations - either proposed or final - were announced until this month, when the Department released final-omitted regulations #14-447, at issue here. In other words, although most of the policies described in these regulations have been in effect for more than four years, the public and the General Assembly have never had an opportunity for meaningful input into the text of the regulations.

Some of the regulatory language that the public and the Legislature are now seeing for the first time has no direct statutory authority; other regulations reflect policy choices on which the public and the General Assembly should have an opportunity to comment. For example, the regulations bar a family from receiving any cash assistance if the family includes an adult who has received five years of TANF assistance. This regulation conflicts with the Legislature's express statement that individuals may receive General Assistance as long as they remain eligible. Another example is a provision barring an individual who has committed an intentional food stamp program violation from receiving cash assistance; we know of no authority for this provision.

For these reasons, proposed rulemaking is not, as the Department maintains, unnecessary or contrary to the public interest. The regulations should be rejected in favor of the public comment process envisioned by the Commonwealth Documents Law.¹

I. Publication of the Act 35 regulations as final-omitted violates the Commonwealth Documents Law because DPW has not shown good cause for omitting proposed rulemaking.

The Commonwealth Documents Law (CDL) mandates a public comment process before the promulgation of regulations, with few exceptions. 45 P.S. §§ 1201, 1202. The exceptions authorize agencies to issue "final-omitted" regulations, without public comment, if

¹ Our objection to DPW's use of final-omitted regulations will not come as a surprise to the Department. We have raised this objection repeatedly over the years. See attached letters from Richard P. Weishaupt and members of the Domestic Violence Task Force.

[t]he agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in [45 P.S. §§ 1201, 1202] are in the circumstances impracticable, unnecessary, or contrary to the public interest.

45 P.S. § 1204(d). DPW asserts that its TANF regulations meet this test because public comment is both unnecessary and contrary to the public interest.² As explained in detail below, neither of these assertions is correct. The Department has not shown "good cause" for circumventing the public comment process. These regulations are therefore not in accord with the Commonwealth Documents Law and should be rejected by the legislative committees, the Attorney General, and the IRRC.³

A. Proposed rulemaking is not "unnecessary."

DPW's explanation why proposed rulemaking is not necessary is that "the majority of amendments are mandated by State law or result from the Federal mandate to implement the TANF program." Preamble, p.3. This statement is a tacit acknowledgment that many of the proposed amendments are *not* in fact mandated. It is precisely because some proposed regulations are not mandated, but are discretionary policy decisions, that the General Assembly instituted the regulatory review process.

It is not "unnecessary" for the public, the standing committees of the General Assembly, and the IRRC to review discretionary regulations. Informed comment could alert the Department to ambiguities, illegalities, and policy issues that it had not considered. By curtailing the regulatory review process, DPW is thwarting the General Assembly's intent to resolve objections

² The CDL also authorizes the promulgation of final-omitted regulations if the "administrative regulation or change therein relates to . . . Commonwealth property, loans, grants, benefits or contracts." 45 P.S. § 1204(1)(iv). DPW asserts that this language authorizes the publication of the TANF regulations as final-omitted, Preamble, p.3, but this argument proves too much: it would justify omitting public comment for every regulation governing DPW's cash assistance, medical assistance, food stamps, and child care subsidy programs. This was not the General Assembly's intent, nor has it been DPW's consistent practice. DPW can hardly be serious in this argument, as is indicated by its far more extensive reliance on the "unnecessary" and "contrary to the public interest" provisions of § 1204.

³ We understand that the IRRC does not believe it has jurisdiction to pass on the form of regulations submitted to it. Even if this is true, the IRRC should be able to take into account the public's curtailed opportunity to comment on the regulations in reviewing the "clarity, feasibility and reasonableness" of the regulations. 71 P.S. § 745a(i)(3).

Review of DPW's Final-Omitted Regulation #14-447 (TANF)

May 22, 2001

Page 4 of 6

to regulations and reach "consensus among the commission, the standing committees, interested parties and the agency." 71 P.S. § 745.2. Many of the objections to the proposed TANF regulations are substantial. Rather than offering the committees and the IRRC an opportunity for meaningful input into the content of the regulations, however, DPW has forced them to approve or disapprove the proposed regulations as a whole, regardless of the improvements they might offer. Such a forced choice is not necessary.

Some of the proposed regulations are so far from being mandatory as to actually conflict with the statutes they purportedly implement. Most serious of these is proposed 55 Pa. Code § 141.41(f), which states that "a family is ineligible for cash assistance payments if it includes an adult who has received 60 months of TANF cash assistance." Appendix A, p.20. This regulation on its face precludes individuals who meet the criteria for receiving General Assistance payments from receiving GA if they have reached the five-year time limit on federally-funded TANF assistance. Federal law, of course, does not impose any limit on state-funded GA assistance. And as we have explained elsewhere (see attached Legal Opinion), the General Assembly has imposed no such time limit on GA receipt. In fact, the Legislature has expressly stated that GA benefits "shall continue as long as the person remains eligible." 62 P.S. § 432(3)(ii).

Another instance of a proposed amendment that conflicts with statutory authority is proposed 55 Pa. Code § 255.1(c)(1), which states that "an individual is ineligible to receive GA or TANF program benefits while serving a disqualification for an intentional program violation resulting from fraud in the AFDC, GA, TANF, Medical Assistance (MA), or Food Stamp (FS) programs." Appendix A, p.58. We know of no statutory authority permitting the Department to disqualify individuals from cash assistance for violating food stamp or Medicaid program rules, absent a criminal conviction. Certainly the citations DPW provides in the Preamble, at p.68, do not provide authority for this proposed regulation. Many individuals are disqualified from food stamp receipt through civil procedures for committing intentional program violations, but if they have not been convicted of a crime, the provisions of 62 P.S. § 481(f) (disqualifying individuals from cash assistance who have been convicted of certain crimes) do not apply.

Other proposed regulations represent policy choices that are not mandated by state or federal law. Among these are changes to 55 Pa. Code § 165.51, regarding conciliation (Appendix A, p.57), and the repeal of 55 Pa. Code § 165.71(b), regarding notices reminding families disqualified for short periods that they can renew their eligibility (Appendix A, p.65). The changes to both these regulations abrogate procedural rights regarding sanctions that are important to TANF families. The public, the General Assembly, and the IRRC should have an opportunity to comment on the merits of repealing these rights.

The publication of the Notice of Rule Change on March 1, 1997 did not make the opportunity for public comment on the text of these regulations unnecessary. The NORC did not

contain the text of regulatory language; it only describes the changes generally.⁴ With the exception of the child support regulations addressing the Family Violence Option, the text of the proposed regulations has never been shared with legal services agencies, despite repeated requests to see them. The statement on page 3 of DPW's Regulatory Analysis Form that "[d]raft copies of the regulations were distributed for comment to legal services organizations" is therefore not true. Similarly, the Department has reneged on the commitment it made in the Governor's regulatory agenda, at least as long ago as February 1998, that these regulations "will be reviewed by representatives of community legal service agencies, the welfare rights organization, and other similar client advocacy groups." 28 Pa. Bulletin 729 (Feb. 7, 1998); 29 Pa. Bulletin 754 (Feb. 6, 1999). None of these organizations have had an opportunity to review the regulations other than the truncated review afforded by the final-omitted regulatory process. And none of the text has ever been shared with the public.

B. Proposed rulemaking is not contrary to the public interest.

DPW asserts that proposed rulemaking is contrary to the public interest because

Federal and State legislation, which promote personal and parental responsibility, strengthen child support, and emphasize self-sufficiency through employment, require an effective shift in the focus of cash assistance programs without delay. Final omit [sic] rulemaking will assist the Department in formulating and implementing the necessary comprehensive programmatic changes in an expeditious manner.

Preamble, p.4. This is simply self-serving and cannot be allowed. The Department has delayed the promulgation of these regulations for over four years, but now asserts that some sort of urgency should bar the public, the General Assembly, and the IRRRC from their only opportunity for input into the crafting of these regulations.⁵

⁴ The NORC was purportedly made pursuant to the Joint Committee on Documents Resolution 1996-1, 26 Pa. Bulletin 2374 (May 18, 1996). This resolution says that a NORC must address "[t]he changes to the affected regulation with appropriate introductory language to indicate that the affected sections and standards will be included in Annex A to the final rulemaking." The March 1, 1997 NORC did not contain the required introductory language, nor the text of the regulations themselves.

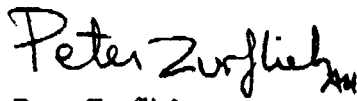
⁵ In passing Act 35, the General Assembly did envision a curtailed rulemaking, but only on the condition that the regulations be issued promptly. Section 21 of Act 35 directed DPW to promulgate final-omitted regulations to implement certain of the Act's provisions, but directed that these regulations be submitted to the Legislative Reference Bureau for publication no later

The Department's sense of urgency is misplaced. DPW has made do without regulations for over four years because, as the Preamble reminds us, most provisions of the regulations were implemented by the March 1, 1997 NORC. The Department's efforts to "promote personal and parental responsibility, strengthen child support, and emphasize self-sufficiency through employment" have proceeded apace. DPW has identified no additional steps that are being held up by the absence of final regulations. Moving forward with welfare reform is indeed an important objective. Absent any evidence that this goal is being undermined without regulations, however, welfare reform poses no urgency justifying foreclosing public comment on regulations that will be binding on recipients and the Department for years to come.

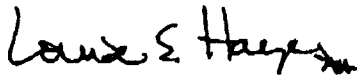
For these reasons, the Department has not shown the requisite "good cause" for omitting proposed rulemaking. Its proposed TANF regulations should therefore be rejected in favor of a process that allows public comment.

Thank you for the opportunity to comment on this important issue.

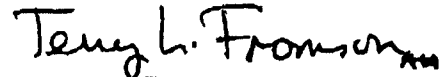
Sincerely,



Peter Zurflieh
Community Justice Project
118 Locust St.
Harrisburg, PA 17101



Louise E. Hayes
Community Legal Services
3638 N. Broad St.
Philadelphia, PA 19140



Terry L. Fromson
Women's Law Project
125 S. 9th St., Suite 300
Philadelphia, PA 19107

cc: John A. Kane, Esq., DPW Chief Counsel (by fax: 717 772-0717)

than December 18, 1996. This section expired December 19, 1996. Its one-time-only grant of authority to omit public comment is no longer available to the Department. The logical conclusion from the expiration date in Section 21 is that, having missed its window of opportunity, DPW must follow the normal rulemaking procedure.

The NORC by its own terms was only to have been "in effect for 365 days pending adoption of final rulemaking by the Department." 27 Pa. Bull. 1099 (March 1, 1997); Joint Committee on Documents Resolution 1996-1, 26 Pa. Bull. 2374 (May 18, 1996). Obviously, DPW missed this deadline by over three years.



COMMUNITY
LEGAL SERVICES, INC.

1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700, Fax: 215.981.0434
Web Address: www.clspnla.org

RECEIVED

2001 MAY 22 PM 4: 02

March 17, 2000
REGULATORY COMMISSION

Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17120

Re: DPW Regulatory Agenda
30 Pa. Bull. 714 (Feb. 5, 2000)

Dear Commissioners,

I am writing to express our concern regarding the DPW Regulatory Agenda recently published in the Pennsylvania Bulletin. Of the 36 regulations listed by DPW, 25 are to be published as final omitted, 2 are being published after a full rulemaking process and 9 are being published as proposed, although past history suggests that even some of those currently planned to be published as proposed will be converted to final omitted as time goes on. We believe this is unacceptable and contrary to the letter and spirit of the law and deprives both the public and the General Assembly of the opportunity to comment on important governmental policy and undermines the mission of the IRRC.

It is abundantly clear that such actions circumvent the Commonwealth Documents Act and the Regulatory Review Act. This pattern of using the final omitted route, instead of the normal rulemaking process, denies the public the right to participate in the rulemaking process and forces the Legislature to truncate its own review. This truncated rulemaking process is fundamentally unfair. As you know, for proposed rulemaking the public has 30 days to comment and the standing committees have an additional 20 days thereafter to comment, with the benefit of the public's comments. 71 P.S. § 745.5. Instead of offering constructive suggestions for improving regulations, both the public and the standing committees are put in the awkward position of opposing the entire regulatory package. This is neither efficient or practical, since many constructive suggestions must be withheld since they do not justify rejecting the regulation, even though their incorporation would make for a better regulation.

The law is clear that the final omitted format is supposed to be used for unusual situations where the normal rulemaking process would not be appropriate or efficient. In the words of the statute, final omitted regulations are to be used when notice of proposed rulemaking would be "impractical, unnecessary or contrary to the public interest." 45 P.S. § 1204 (3). Under the categories of "impractical" and "contrary to the public interest"

fall regulations which have a significant and immediate fiscal impact and those that are written to respond to emergencies. A regulation is "unnecessary" when the legal basis for a regulation has been repealed or is no longer needed.

A close examination of the Regulatory Agenda, shows that none of these circumstances apply in the vast majority of regulations that are currently being planned. Most of the rules being contemplated implement statutes that were enacted several years ago. For example, Acts 1994-49, 1995-20 and 1996-35 were all passed several years ago; obviously DPW has been operating without the benefit of regulations for at least 4 and as many as 6 years thus far. There simply is no emergency justifying the denial of public and legislative input.

Rather than go through a final omitted procedure, DPW could publish rules **now** and use the proposed route in order to benefit from the public's input and suggestions. The proposed rulemaking process allows the agency to make changes as concerns are voiced rather than consider the regulations as a package.

No doubt DPW will argue that the regulations in the current Agenda 1) contain nothing new, 2) contain provisions that will be beneficial to recipients and 3) that the normal rulemaking process will take too long. We will address these arguments in order. First, if the regulations really have nothing new, there is no reason not to publish proposed regulations, since there will not be any change in DPW operations. Generally, we have found that even when DPW claims there is nothing new, there are still policy choices to be made and shadings of meaning in the draft regulations that should be addressed. This was certainly the case with DPW's latest regulatory package, the so-called "Combo Package."


Second, DPW, may also argue that these regulations contain improvements that should be implemented quickly. This is a difficult argument to accept when dealing with regulations implementing statutes enacted at least 4 years ago; even giving the agency the benefit of the doubt, why not speed up the proposed regulations so that the final regulation goes through in the same amount of time? Some of the regulations being developed in the Regulatory Agenda were on previous agendas with much earlier publication dates. Either these earlier dates were untrue or DPW has let the deadline slip in an unacceptable way. In either case there is room for improvement.

Finally, DPW may contend that the normal rulemaking process takes too long. However, other state agencies manage to comply with the law without resorting to final omitted rules 70% of the time. Rather than delay publishing regulations for years, we invite DPW

to draft regulations more quickly and allow the public to participate in the process of developing final regulations as the General Assembly intended.

We urge the Commission to communicate to DPW the need to use the final omitted route more sparingly, as the General Assembly intended and to look with disfavor upon regulatory packages put forth under the rubric of final omitted regulations. To do otherwise will only encourage the agency to shield regulations from meaningful public participation.

Very truly yours,


Richard P. Weishaupt
Senior Attorney

cc: John A. Kane, Esq., Chief Counsel, DPW

WOMEN'S LAW AGENCY

125 South Ninth Street, Suite 300
Philadelphia, PA 19107
215/928-9801 Fax: 215/928-9848

Board of Trustees

Mable Coward (Chair)
Rebecca Alpert
Joel Berner
Cathy Carr
Jennifer R. Clark
Hope A. Consky
Julia A. Conover
Alicia Field
Abbe Fletome
Judith Harris
Wynn Walsman Morris
Steven K. Ludwig
Lynn A. Marks
Joann Mitchell
Nancy Piat
Douba Rawes
Barbara S. Rosenberg
Carol Nelson Shepherd
Martha Swartz
Ruth Tassar
Cynthia R. Thompson
Carol E. Tracy (ex-officio)
Elizabeth Werfson
Thomas Lemais

Executive Director

Carol E. Tracy

Managing Attorney

Terry Promosa

Associate Director

Dabney Miller

Staff Attorneys

Susan Fritzsche
David S. Cohen

Program Assistant

Astra Outley

Program Manager

Debra L. Rubin

Accountant

Green Knight

Administrative Associate

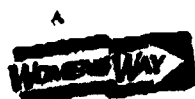
Sherri Dunson

Office Manager

Debi Morrison

Office Assistant

Anne Weiner



AGENCY

RECEIVED
2001 MAY 22 PM 4: 03
DOMESTIC VIOLENCE
REVIEW COMMISSION



March 7, 2001

Feather O. Houstoun, Secretary
Department of Public Welfare
Health & Welfare Building, Room 333
7th & Forster Streets
Harrisburg, PA 17120

Sherri Z. Heller, Deputy Secretary
Office of Income Maintenance
Department of Public Welfare
Health & Welfare Building, Room 333
7th & Forster Streets
Harrisburg, PA 17120

Dear Secretary Houstoun and Deputy Secretary Heller:

We understand that the Department intends to submit Family Violence Option (FVO) regulations relating to good cause waivers of child support in Final-Omitted form in the very near future, without input from the Domestic Violence/TANF Task Force. At the Domestic Violence/TANF Task Force meeting on Friday, February 16, 2000, we learned that these FVO regulations will be included in a larger set of regulations implementing the TANF program. We urge you not to do this and to instead seek Task Force input and publish the regulations in proposed form.

These FVO regulations, which impact directly on the Task Force's work with the Department on Pennsylvania's implementation of the Family Violence Option, have not been shared with the Task Force, even though we have asked to see them. Initially, we were told that the TANF regulatory package would not include any regulations relevant to the Family Violence Option and that the FVO regulations would be published separately as proposed regulations. However, the Department apparently changed its mind about this, after issuing the June 8, 2000 NORC, and decided to include the FVO regulations as part of the Final Omitted package of TANF regulations. Thus, not only has the Task Force been denied the opportunity to review DPW's draft FVO regulations prior to their release (even

though these regulations are based upon and purport to implement the work of the Task Force) the Task Force will also be denied any meaningful opportunity to comment on the regulations after they are released, as a result of the Department's decision to include them in a package of Final Omitted regulations.

We are seriously concerned about the Department's failure and refusal to permit the Task Force to have input into the draft regulations, in contravention of specific commitments made to us by the Department following the publication of the June 8 NORC concerning good cause waivers for child support cooperation. As the NORC was about to be published, we wrote to you regarding provisions which were included in the NORC, but had never been considered by the Task Force. Following our correspondence, the Department published the NORC with the disputed provisions, but assured us that the Operations Memorandum (implementing FVO good cause rules pending the issuance of final regulations) would be published without those particular provisions and that the Task Force would be permitted to have input on the FVO regulations, including but not limited to the disputed provisions, as they were being developed. In a letter dated June 8, 2000, Deputy Secretary Sherri Heller informed us that DPW "will provide [the Task Force] a copy of the draft timetable for the regulations and the expectation is that the Task Force will be involved in the development of the regulations." (emphasis added). This followed a commitment made by Edward Zogby, Director of the Bureau of Policy, in a telephone conversation with us on May 26, 2000. Mr. Zogby also informed us that the regulations would be published as proposed regulations.

While the Department kept its commitment with respect to the Operations Memorandum distributed on June 10, 2000, the same cannot be said with respect to the regulations. The Department is completely sidestepping the Task Force, which it created to assist DPW in implementing the FVO and which has worked diligently over several years on the good cause for waiver of support cooperation provisions of the FVO that is being included in the regulatory package. Moreover, promulgating regulations relating to the FVO as Final Omitted will deprive the Task Force, other members of the public, relevant legislative committees, and the IRRC of the benefits of notice and comment mandated by the Commonwealth Documents Law.

The notice and comment requirements of the Commonwealth Documents Law serve the public interest and should not be circumvented, as DPW plans to do. The process that DPW is required to follow in promulgating the FVO regulations begins with the publication of proposed rulemaking in the Pennsylvania Bulletin. Following publication, the Task Force and other members of the public would be given a period of thirty days within which to submit written comments and recommended changes to DPW. The relevant standing committees of the General Assembly would then have the opportunity to consider the comments from the Task Force and others and to make comments of their own. At the conclusion of the legislative comment period, the IRRC, having considered the comments and recommendations of the Task Force, other interested persons, and the legislative committees, would submit its own comments. DPW would then be required to consider all of the comments and recommendations submitted, make whatever changes in the regulations it deems advisable, and submit the amended regulations, along with its responses to the comments received, as final form regulations to the IRRC for approval or disapproval. Only after DPW responds to comments and makes any amendments it

considers appropriate would the committees and the IRRC address the question of approval or disapproval of the regulations.

However, when regulations are submitted as Final Omitted, the opportunity for the public, the legislative committees, and the IRRC to comment, and the requirement that DPW consider and respond to those comments, is eliminated. The legislative committees and the IRRC may only vote to approve or disapprove a Final Omitted regulatory package -- and this without the benefit of having received any comments from the public at large. Because the notice and comment provisions are so strongly in the public interest, the Commonwealth Documents Law permits regulations to be promulgated as Final Omitted regulations only in extraordinary circumstances, where it is either impracticable or unnecessary to afford the public an opportunity for comment.¹ These circumstances do not exist here.² Considering the impact that the FVO regulations will have on families at risk of abuse, the Department should take great care to ensure that its regulations have been reviewed by those who have expertise and experience with domestic violence and who are willing to offer thoughtful analysis. The best way to do this is by publishing the regulations as proposed rulemaking.

We write to you now to request that you remove the regulations pertaining to the Family Violence Option from the Final Omitted regulations, submit them to the Domestic Violence/TANF Task Force for review and input, and publish them as proposed regulations. Having developed the policy and procedures upon which the regulations should be based, the Task Force should be given an opportunity to provide meaningful input as to how their work is translated into regulatory language. As we have discussed with you previously, meaningful review and input by the Task Force can only occur if the Task Force has an opportunity to discuss and resolve any differences it may have with the text of the regulations with persons in authority to make decisions regarding the content of the regulations. This is critical in light of the fact that those making decisions regarding the content of the regulations have not participated

¹ Specifically, the Commonwealth Documents Law permits the Commonwealth to omit the notice and comment requirements of 45 Pa.C.S.A. § 1202 and 1203 only if:

- (1) The administrative regulation or change therein relates to: (i) military affairs; (ii) agency organization, management or personnel; (iii) agency procedures or practice; (iv) Commonwealth property, loans, grants, benefits or contracts; or (v) the interpretation of a self-executing act of Assembly or administrative regulation; or
- (2) All persons subject to the administrative regulation or change therein are named therein and are either personally served with notice of the proposed promulgation, amendment or repeal or otherwise have actual notice thereof in accordance with law; or
- (3) The agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.

45 Pa. C.S.A. § 1204.

² We seriously question whether circumstances exist for avoiding public notice and comment procedures with respect to any of the regulations the DPW intends to publish in the final omitted package. This package will be quite large and include regulations covering the TANF program in its entirety. It is precisely the type of regulatory package that should have the benefit of public input.

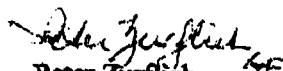
Secretary Heather O. Houston
Deputy Secretary Sherri Z. Heller
March 7, 2001
Page 4

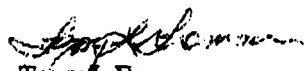
in the Task Force. In addition, publishing these regulations as proposed regulations is consistent with the Department's original intent and with the Commonwealth Documents Law.

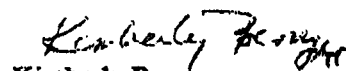
Neither the Task Force nor the public should be denied the opportunity to provide input to assist the Department in meeting its goal of providing necessary assistance to families affected by domestic violence. Consistent with your commitment to the Task Force and to the public, we ask that you allow the Task Force an opportunity to review and provide feedback on the content of the regulations and publish the Family Violence Option regulations in proposed form.

Thank you for your immediate attention and consideration to this request.

Very truly yours,


Peter Zurflieh
Community Justice Project
118 Locust St.
Harrisburg, PA 17101


Terry L. Fromson,
Women's Law Project
125 S. 9th St., Suite 300
Philadelphia, PA 19107


Kimberly Berry
Community Legal Services
3638 N. Broad St.
Philadelphia, PA 19140

cc: Senator Harold Mowery
Senator Vincent Hughes
Representative Dennis O'Brien
Representative Frank Oliver
Senator David Brightbill
Senator Robert Mellow
Representative William DeWeese
Representative John Perzel
Dave DeVries, Attorney General's Office

Question

Do individual adults and children who meet the eligibility requirements for the state funded General Assistance program qualify for GA, if they have received federally funded Temporary Aid to Needy Families (TANF) assistance for five years?

Opinion

It is the legal opinion of Community Legal Services, Inc. that, under state law, General Assistance must be provided to adults and children who otherwise qualify for GA regardless of their prior receipt of federally funded TANF for the statutory maximum of five years.

The GA Statute Contains No Time Limit, Nor Does It Preclude TANF Recipients Who Reach Their Time Limit

Pennsylvania law is clear that General Assistance is to be provided without artificial time limits for certain groups of needy Pennsylvanians who are unable to work because of physical or mental impairments or because of familial obligations. GA benefits "shall continue as long as the person remains eligible." 62 Purdon's Stat. § 432(3)(ii). Of course, if such individuals are eligible for cash assistance under the GA program, they are subject to the rules that govern the GA program.

The question of time limits arises because of the federal law that establishes the Temporary Assistance to Needy Families program. That law states that the federal money that is provided to the states under the TANF program may not generally¹ be used to provide assistance to any adult-headed family for more than five years. 42 U.S.C. § 608(a)(7). However the federal regulations implementing that statute explicitly permit the use of state funded programs to provide assistance after the expiration of the five year period, and permit such state funds to count towards the state's Maintenance of Effort obligation. 45 C.F.R. §263.2(b)(1)(ii). The question of the applicability of the five year time limit is of increasing importance since Pennsylvania elected to initiate a federally funded TANF program

¹The federal law does allow for a state to exempt up to 20% of its caseload from the five year lifetime limit. Pennsylvania has not elected to publish any exemptions thusfar.

on March 3, 1997, 27 Pa. Bull. 342 (January 18, 1997), making at least some TANF families ineligible for federal aid beginning in March, 2002.

The General Assistance program was created by the state legislature to provide assistance to individuals for whom federally funded assistance is not available. Pennsylvania law does not contain a five year time limit. The Welfare Code, moreover, is unambiguous in stating that certain categories of people are eligible for General Assistance without any fixed time limit; two other categories are eligible for General Assistance for very short periods. The General Assistance eligibility section is clear that there are "persons who may be eligible for general assistance for an indeterminate period as a result of medical, social, or related circumstances." 62 Purdon's Stat. §432 (3) (emphasis added). The statute limits these groups of eligible individuals to the following categories:

- (A) children;
- (B) two parent households where there is a child under 13 or an older child with a verified disability requiring care;
- (C) persons who have been verified as having a temporary or permanent disability that prevents them from working;
- (D) non-parental caretakers of a child under 13 or any other person with an illness or disability;
- (E) for 9 months in an individual's lifetime, an active participant in a drug or alcohol program, where participation precludes employment;
- (F) pregnant woman;
- (G) for 9 months in an individual's lifetime, a victim of domestic violence.

Id. With the exception of those groups limited to 9 months of General Assistance, state funded aid is to continue for as long as the person is otherwise eligible. 62 Purdon's Stat. § 432(3) (ii).

This provision of assistance for an indeterminate period of time is predicated upon the legislature's notion that most recipients should move towards self-sufficiency, but that some will be unable to do so. Rather than mandate a fixed time limit for most GA categories, Pennsylvania law states that:

no recipient of cash or medical assistance shall be entitled to indefinite cash or medical assistance unless it can be established that:

- (1) the person is permanently disabled and unable to work; or

- (2) the person is required to be in the home full time to care for a dependent adult or child who requires constant attention and supervision....

62 Purdon's Stat. §401(b) (emphasis added). In short, assistance may continue indefinitely for those who cannot work. Others, like children, those with temporary disabilities, and pregnant women, will eventually leave assistance as they become older or as their condition improves or they give birth.

It is crucial to note that the legislature did not restrict GA to those who don't have children or those who have not previously received federally funded assistance. In fact, cash assistance recipients always have been able to move from the federal to the state program if they no longer qualify for federal assistance. A parent who was receiving AFDC or TANF, and who loses eligibility for federal funding (for example, because the child dies, or reaches adulthood, or is no longer living with the parent) has always been routinely transferred to the GA program, if the parent meets the GA criteria.²

The GA Statute Reveals Legislative Intent To Protect The Most Vulnerable Pennsylvanians

The General Assembly's decision to provide state-funded assistance to individuals in these groups for whom federal assistance is unavailable is based on the inability of such individuals to be self sufficient. All have circumstances that preclude employment, or at least make employment unlikely, and therefore are in need of support for a longer period.

Children are the most important and largest group eligible for state-funded assistance for an indeterminate period of time. This is not surprising since our society does not expect young children to work to support themselves. The Welfare Code provides that whatever the circumstances of their parents, children facing destitution are not to be deprived of support. While the parents of such children may be terminated from TANF once they had received five years of federal assistance (assuming

²Indeed, while the purpose of this opinion is to outline the requirements of state law concerning the qualification of former TANF recipients for GA, the denial of benefits to those who previously received TANF because of that status would raise serious questions as to the validity of such a categorization under the equal protection clause. Permitting disabled adults without children to receive GA but not permitting disabled adults with children to receive those benefits would be a distinction without a rational basis (in fact, it would be irrational to disfavor families with children.

that they do not otherwise qualify for General Assistance) the General Assembly provided a safety net for children that would prevent destitution.³ In short, the statute strikes a balance between supporting children and providing a powerful motivation for a parent to seek employment.

People with physical or mental disabilities also qualify for GA of indeterminate length. The legislative intent section of the statute is clear - indefinite cash assistance is appropriate in the limited circumstance that a person is "permanently disabled and unable to work." 62 Purdon's Stat. §§ 401(b)(1), 432(3)(C).

The Welfare Code also sets out other classes of individuals who may receive assistance for an indeterminate period -- those "required to be in the home full time to care for a dependent adult or child who requires constant attention and supervision and there is no other adult in the household capable of providing such care." 62 Purdon's Stat. §401(b)(2). Thus the GA statute provides for ongoing eligibility for parents of disabled children, § 432(3)(B), and non-parental caretakers of young children and those caring for ill and disabled household members of any age. §432(3)(D).

Finally, the General Assembly also provided for eligibility for pregnant women and for two parent households with young children. Both categories contain their own inherent time limitations - pregnancies come to term in about nine months and children will grow older.

In short, Pennsylvania has designed General Assistance as a program of last resort to support those who cannot work, carefully tailoring the assistance offered to individual circumstances and the possible need for indefinite support in some cases and time limited state-funded support only in two very explicit situations.

The Uniformity Clause Does Not Prevent GA Eligibility

It has been argued by some that the so-called "uniformity clause" of the Welfare Code precludes eligibility for General Assistance after the federal TANF time limit has expired. That clause states:

³ Such children would live in circumstances that were extremely meager. With their parents removed from the grant, such children would receive only 26.8% of the federal poverty level in monthly income to provide for the needs of their family.

Whenever possible, except for residency requirements for general assistance, and consistent with State law, the department shall establish rules, regulations and standards for general assistance consistent with those established for aid to families with dependent children.

62 Purdon's Stat. §403 (b) (fourth sentence) (emphasis added). While this provision clearly calls for consistency between the GA and AFDC programs,⁴ it does not require absolute identity. Indeed, the key word is "consistent." The statutory mandate of consistency is met when the programs generally follow the same approach, not when they are identical. In fact, absolute identity would make the GA program redundant.

The GA program, like similar programs in other states, functions as a program of last resort, for those who are not eligible for other kinds of governmental assistance. Unlike programs meant to cover the aged or families with children, General Assistance is a more generalized program intended to cover any needy person who does not qualify for another form of governmental aid. See, e.g. Medora v. Colautti, 602 F.2d 1149 (3rd Cir. 1979) (finding denial of GA to those disqualified from SSI to be illegal and inconsistent with the purposes of the statute).

Where the legislature does not want those who do not qualify for another program to qualify for the GA program, it has spoken explicitly. Thus, the Welfare Code specifically prohibits those who refuse to cooperate in establishing eligibility for federally funded assistance from being transferred to the GA program. 62 Purdon's Stat. § 432(8). Where there has been no such explicit instruction, it would be unlawful to deny coverage to those who meet the definitive conditions of GA eligibility.

Even if it could be argued that the general notion of consistency might require a TANF-like time limit, the argument would fail to take into account the remainder of the sentence requiring consistency. The statute states that such consistency may only be enforced where it would itself be consistent with state law.

⁴The AFDC program was replaced with the TANF program by federal law in 1996. For the sake of argument, we presume without taking a final position that the legislature intends that the TANF program should be substituted for all of the mentions of the AFDC program in the statute. If this is not the case, then the question of AFDC - GA consistency becomes much easier, since the question would be moot.

Page 6 of 6

Here, it can not be denied that the General Assembly specifically provided for a GA program without any time limits in that the law at two separate points calls for indefinite or indeterminate eligibility for those who are unable to work. 62 Purdon's Stat. § 401(b) and 432(3). It would be inconsistent with state law to deny GA benefits to those who have exhausted their TANF benefits if they otherwise fit the definitions of eligibility set out in the GA statute. The GA statute clearly allows assistance to be granted for an indeterminate period, 62 Purdon's Stat. § 432(3)(i), and further provides that General Assistance benefits "shall continue as long as the person remains eligible." 62 Purdon's Stat. § 432(3)(ii).

Respectfully submitted,

S/

Richard P. Weishaupt
Amy E. Hirsch
Sharon M. Dietrich
for Community Legal Services, Inc.



Law Center North Central
3638 North Broad Street, Philadelphia, PA 19140
Phone: 215.227.2400

FAX TRANSMITTAL COVER SHEET

FAX NUMBER: (215) 227-2435

DATE: 5/22/01

TO: IRRC

FAX NUMBER: (717) 783-2664

FROM: AMY HIRSCH

DIRECT DIAL TELEPHONE: (215) 227-2400 EXT. 2415 FAX: (215) 227-2435

TOTAL NUMBER OF PAGES (INCLUDING THIS COVER SHEET):

RE: DPW Final Omitted Regulations # 14-447

MESSAGE: Thank you for considering these comments.

RECEIVED
2001 MAY 22 PM 4: 00
REVIEW COMMISSION

Please call the direct dial number above if there are any problems with this transmission. The information contained in this fax transmittal is legally privileged and confidential and intended only for the use of the individual or organization named above. If you receive this message but are not the intended recipient, please destroy the fax transmittal and notify the sender at the above direct dial number. Thank you for your cooperation.

TO BE COMPLETED AFTER FAX HAS BEEN TRANSMITTED:

DATE OF TRANSMISSION:

TIME:

OPERATOR:

Original: 2195

Independent Regulatory Review Commission
333 Market St.
Harrisburg, PA 17120

Fax: (717) 783-2664

RECEIVED

2001 JUN 13 AM 9:13

INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: DPW Final-Omitted Regulations #14-447
Implementation of TANF/Act 35

Dear Members of the IRRC:

I am writing to urge you not to approve DPW's Regulations #14-447. These regulations are really important and DPW should not be rushing them through. DPW has taken almost five years to issue them, and the public should be given the normal time to respond to DPW's proposals. The regulations will harm low-income families, and include provisions that are especially harmful to families that are homeless, people with disabilities, and people with limited English proficiency. The regulations include some provisions that violate the state statutes, and others that are contradictory to DPW's policies. **Please do not approve the regulations in their current form.**

Problems with the regulations include problems with how the regulations deal with the time limit on federally funded TANF benefits, the work requirements, and the Family Violence Option provisions to protect battered women. These are complicated provisions, and more time is needed for the public to comment and for DPW to consider those comments before issuing final regulations. Here are some of the most important problems:

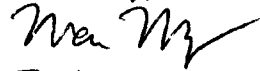
- **Families eligible for General Assistance (the state's welfare program) will be barred from getting it if they have used up their 60 months of federally funded TANF.** This violates our state statute, which does not have a time limit for General Assistance, and which clearly allows families that are no longer eligible for TANF to get General Assistance if they meet the GA criteria. Children and people with disabilities are two of the groups that meet the GA criteria.
- **The regulations don't provide any exceptions at all to the 60 month TANF time limit.** The federal law allows states to exempt 20% of the TANF caseload from the 60 month time limit, and to exempt battered women from the time limit. DPW has announced that it intends to provide exemptions through "Overtime" programs, but the regulations don't allow for any exemptions. The regulations also don't even mention (and apparently would not allow) DPW's new "Time-Out" program that DPW has said will start on July 1, 2001, and take certain categories of families "off the clock."
- **The welfare office will no longer be required to help people who are having trouble getting "verification" of a disability.** For many people with disabilities, especially people who are homeless or have limited English proficiency, getting verification can be difficult - if

caseworkers don't help gather the necessary paperwork, these people may not be able to prove they are disabled. The regulations also delete the existing protection that only "reasonably available" documents can be required.

- **The protections to prevent inappropriate sanctions have been gutted.** Important protections have been in place to ensure that families don't lose their benefits when they are trying to comply with work requirements, or when they have been unable to comply because of illness, child care problems, or misunderstanding. The regulations eliminate these protections. As a result, families could lose their benefits even though they are trying their best to comply with work requirements.
- **The regulations don't include the compromise modifications to DPW's work program that DPW adopted to avoid legislation that would have allowed more education and training.** When House Bill 1266 was pending, DPW agreed to exercise its discretionary authority to make important changes in its work requirements to allow greater access to education and training. These changes, which are consistent with Act 35, should be included in the regulations.
- **The regulations illegally disqualify people from cash assistance who have not been convicted of crimes.** The state statute says that people who are convicted of certain crimes are disqualified from getting cash assistance. However the regulations would also wrongly deny cash assistance to other people who have been disqualified from the Food Stamp program but who have not been convicted of any crime. These people should still be able to get cash assistance.
- **The regulations don't properly protect survivors of domestic violence.** They are not consistent with policies recommended by the Domestic Violence Task Force appointed by DPW and previously adopted by DPW. For example, "good cause" waivers of the child support enforcement cooperation requirement should not have an "expiration date" and should last as long a woman or her children need a waiver to ensure that their safety is not jeopardized.

Thank you for considering these comments. I hope that you will not approve these regulations until these problems have been fixed.

Sincerely,


Rebbi Marc Mazola

Original: 2195

Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17120

Fax:(717)783-2664

Re: DPW Final-omitted Regulations #14-447
Implementation of TANF - Act 35

RECEIVED

2001 JUN 11 AM 9:05

INDEPENDENT REGULATORY
REVIEW COMMISSION



Dear Members of the IRRC:

I am writing to urge you not to approve DPW's Regulations #14-447. These regulations are really important and DPW should not be rushing them through. DPW has taken almost five years to issue them, and the public should be given the normal time to respond to DPW's proposals. The regulations will harm low-income families, and include provisions that are especially harmful to families that are homeless, people with disabilities, and people with limited English proficiency. The regulations include some provisions that violate the state statutes, and others that are contradictory to DPW's policies. Please do not approve the regulations in their current form.

Problems with the regulations include problems with how the regulations deal with the time limit on federally funded TANF benefits, the work requirements, and the Family Violence Option provisions to protect battered women. These are complicated provisions, and more time is needed for the public to comment and for DPW to consider those comments before issuing final regulations. Here are some of the most important problems:

- Families eligible for General Assistance (the state's weffare program) will be barred from getting It if they have used up their 60 months of federally funded TANE. This violates our state statute, which does not have a time limit for General Assistance, and which clearly allows families that are no longer eligible for TANF to get General Assistance if they meet the GA criteria. Children and people with disabilities are two of the groups that meet the GA criteria.
- The regulations don't provide any exceptions at all to the 60 month TANF time limit. The federal law allows states to exempt 20% of the TANF caseload from the 60-month time limit, and to exempt battered women from the time limit. DFW has announced that it intends to provide exemptions through "Overtime" programs, but the regulations don't allow for any exemptions. The regulations also don't even mention (and apparently would not allow) DPW's new "Time-Out" program that DPW has said will start on July 1, 2001, and take certain categories of families "off the clock."
- The welfare office will no longer be required to help people who are having trouble getting "verification" of a disability. For many people with disabilities, especially people who are homeless or have limited English proficiency, getting verification can be difficult if caseworkers don't help gather the necessary paperwork, these people may not be able to prove they are disabled. The regulations also delete the existing protection that only "reasonably available" documents can be required.

- The protections to prevent inappropriate sanctions have been gutted. Important protections have been in place to ensure that families don't lose their benefits when they are trying to comply with work requirements, or when they have been unable to comply because of illness, child care problems, or misunderstanding. The regulations eliminate these protections. As a result, families could lose their benefits even though they are trying their best to comply with work requirements.
- The regulations don't include the compromise modifications to DPW's work program that DPW adopted to avoid legislation that would have allowed more education and training when House Bill 1266 was pending, DPW agreed to exercise its discretionary authority to make important changes in its work requirements to allow greater access to education and training. These changes, which are consistent with Act 35, should be included in the regulations.
- The regulations illegally disqualify people from cash assistance who have not been convicted of crimes. The state statute says that people who are convicted of certain crimes are disqualified from getting cash assistance. However the regulations would also wrongly deny cash assistance to other people who have been disqualified from the Food Stamp program but who have not been convicted of any crime. These people should still be able to get cash assistance.
- The regulations don't properly protect survivors of domestic violence. They are not consistent with policies recommended by the Domestic Violence Task Force appointed by DPW and previously adopted by DPW. For example, "good cause" waivers of the child support enforcement cooperation requirement should not have an "expiration date" and should last as long a woman or her children need a waiver to ensure that their safety is not jeopardized.

Thank you for considering these comments. I hope that you will not approve these regulations until these problems have been fixed.

Sincerely,

*Jenn K Bertrand
and Leslie M Schneider*

6/4/01

Original: 2195

Independent Regulatory Review Commission
333 Market St.
Harrisburg, PA 17120

Fax: (717) 783-2664

RECEIVED

2001 JUN -5 AM 10: 01

INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: DPW Final-Omitted Regulations #14-447
Implementation of TANF/Act 35

Dear Members of the IRRC:

I am writing to urge you not to approve DPW's Regulations #14-447. These regulations are really important and DPW should not be rushing them through. DPW has taken almost five years to issue them, and the public should be given the normal time to respond to DPW's proposals. The regulations will harm low-income families, and include provisions that are especially harmful to families that are homeless, people with disabilities, and people with limited English proficiency. The regulations include some provisions that violate the state statutes, and others that are contradictory to DPW's policies. **Please do not approve the regulations in their current form.**

Problems with the regulations include problems with how the regulations deal with the time limit on federally funded TANF benefits, the work requirements, and the Family Violence Option provisions to protect battered women. These are complicated provisions, and more time is needed for the public to comment and for DPW to consider those comments before issuing final regulations. Here are some of the most important problems:

- **Families eligible for General Assistance (the state's welfare program) will be barred from getting it if they have used up their 60 months of federally funded TANF.** This violates our state statute, which does not have a time limit for General Assistance, and which clearly allows families that are no longer eligible for TANF to get General Assistance if they meet the GA criteria. Children and people with disabilities are two of the groups that meet the GA criteria.
- **The regulations don't provide any exceptions at all to the 60 month TANF time limit.** The federal law allows states to exempt 20% of the TANF caseload from the 60 month time limit, and to exempt battered women from the time limit. DPW has announced that it intends to provide exemptions through "Overtime" programs, but the regulations don't allow for any exemptions. The regulations also don't even mention (and apparently would not allow) DPW's new "Time-Out" program that DPW has said will start on July 1, 2001, and take certain categories of families "off the clock."
- **The welfare office will no longer be required to help people who are having trouble getting "verification" of a disability.** For many people with disabilities, especially people who are homeless or have limited English proficiency, getting verification can be difficult - if

caseworkers don't help gather the necessary paperwork, these people may not be able to prove they are disabled. The regulations also delete the existing protection that only "reasonably available" documents can be required.

- **The protections to prevent inappropriate sanctions have been gutted.** Important protections have been in place to ensure that families don't lose their benefits when they are trying to comply with work requirements, or when they have been unable to comply because of illness, child care problems, or misunderstanding. The regulations eliminate these protections. As a result, families could lose their benefits even though they are trying their best to comply with work requirements.
- **The regulations don't include the compromise modifications to DPW's work program that DPW adopted to avoid legislation that would have allowed more education and training.** When House Bill 1266 was pending, DPW agreed to exercise its discretionary authority to make important changes in its work requirements to allow greater access to education and training. These changes, which are consistent with Act 35, should be included in the regulations.
- **The regulations illegally disqualify people from cash assistance who have not been convicted of crimes.** The state statute says that people who are convicted of certain crimes are disqualified from getting cash assistance. However the regulations would also wrongly deny cash assistance to other people who have been disqualified from the Food Stamp program but who have not been convicted of any crime. These people should still be able to get cash assistance.
- **The regulations don't properly protect survivors of domestic violence.** They are not consistent with policies recommended by the Domestic Violence Task Force appointed by DPW and previously adopted by DPW. For example, "good cause" waivers of the child support enforcement cooperation requirement should not have an "expiration date" and should last as long a woman or her children need a waiver to ensure that their safety is not jeopardized.

Thank you for considering these comments. I hope that you will not approve these regulations until these problems have been fixed.

Sincerely,

M. Helene Pollock

M. HELENE POLLOCK
550 W. QUEEN LANE
PHILADELPHIA, PA 19144

With your expertise in the formulation of regulations, surely you must see that this approach is inhumane and inadequate. We can do better than this!

Original: 2195

Independent Regulatory Review Commission
333 Market St.
Harrisburg, PA 17120

Fax: (717) 783-2664

RECEIVED
2001 JUN -5 PM 2:25

INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: DPW Final-Omitted Regulations #14-447
Implementation of TANF/Act 35

Dear Members of the IRRC:

I am writing to urge you not to approve DPW's Regulations #14-447. These regulations are really important and DPW should not be rushing them through. DPW has taken almost five years to issue them, and the public should be given the normal time to respond to DPW's proposals. The regulations will harm low-income families, and include provisions that are especially harmful to families that are homeless, people with disabilities, and people with limited English proficiency. The regulations include some provisions that violate the state statutes, and others that are contradictory to DPW's policies. Please do not approve the regulations in their current form.

Problems with the regulations include problems with how the regulations deal with the time limit on federally funded TANF benefits, the work requirements, and the Family Violence Option provisions to protect battered women. These are complicated provisions, and more time is needed for the public to comment and for DPW to consider those comments before issuing final regulations. Here are some of the most important problems:

- **Families eligible for General Assistance (the state's welfare program) will be barred from getting it if they have used up their 60 months of federally funded TANF.** This violates our state statute, which does not have a time limit for General Assistance, and which clearly allows families that are no longer eligible for TANF to get General Assistance if they meet the GA criteria. Children and people with disabilities are two of the groups that meet the GA criteria.
- **The regulations don't provide any exceptions at all to the 60 month TANF time limit.** The federal law allows states to exempt 20% of the TANF caseload from the 60 month time limit, and to exempt battered women from the time limit. DPW has announced that it intends to provide exemptions through "Overtime" programs, but the regulations don't allow for any exemptions. The regulations also don't even mention (and apparently would not allow) DPW's new "Time-Out" program that DPW has said will start on July 1, 2001, and take certain categories of families "off the clock."
- **The welfare office will no longer be required to help people who are having trouble getting "verification" of a disability.** For many people with disabilities, especially people who are homeless or have limited English proficiency, getting verification can be difficult - if

Page 2

caseworkers don't help gather the necessary paperwork, these people may not be able to prove they are disabled. The regulations also delete the existing protection that only "reasonably available" documents can be required.

- **The protections to prevent inappropriate sanctions have been gutted.** Important protections have been in place to ensure that families don't lose their benefits when they are trying to comply with work requirements, or when they have been unable to comply because of illness, child care problems, or misunderstanding. The regulations eliminate these protections. As a result, families could lose their benefits even though they are trying their best to comply with work requirements.

- **The regulations don't include the compromise modifications to DPW's work program that DPW adopted to avoid legislation that would have allowed more education and training.** When House Bill 1266 was pending, DPW agreed to exercise its discretionary authority to make important changes in its work requirements to allow greater access to education and training. These changes, which are consistent with Act 35, should be included in the regulations.

- **The regulations illegally disqualify people from cash assistance who have not been convicted of crimes.** The state statute says that people who are convicted of certain crimes are disqualified from getting cash assistance. However the regulations would also wrongly deny cash assistance to other people who have been disqualified from the Food Stamp program but who have not been convicted of any crime. These people should still be able to get cash assistance.

- **The regulations don't properly protect survivors of domestic violence.** They are not consistent with policies recommended by the Domestic Violence Task Force appointed by DPW and previously adopted by DPW. For example, "good cause" waivers of the child support enforcement cooperation requirement should not have an "expiration date" and should last as long a woman or her children need a waiver to ensure that their safety is not jeopardized.

Thank you for considering these comments. I hope that you will not approve these regulations until these problems have been fixed.

Sincerely,

Michelle Rose Madra