

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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

December 20, 2001

Honorable Feather O. Houstoun, Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, PA 17105

Re: Regulation #14-472 (IRRC #2224)
Department of Public Welfare
TANF Program

Dear Secretary Houstoun:

Enclosed are our Comments. They will soon be available on our website at 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 my office at 783-5417.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Nyce". The signature is fluid and cursive, written over the typed name.

Robert E. Nyce
Executive Director
evp
Enclosure

cc: Honorable Dennis M. O'Brien, Majority Chairman, House Health and Human Services Committee
Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services Committee
Honorable Harold F. Mowery, Chairman, Senate Public Health and Welfare Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee
Nia Wilson, Legal Counsel, House Health and Human Services Committee
Stanley Mitchell, Chief Counsel, House Health and Human Services Committee

Comments of the Independent Regulatory Review Commission

on

Department of Public Welfare Regulation No. 14-472

TANF Program

December 20, 2001

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 have not been met. The Department of Public Welfare (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by November 19, 2003, the regulation will be deemed withdrawn.

1. General. – Consistency with statute; Implementation procedures; Reasonableness; Clarity.

Implementation procedures.

In Senator Hughes' letter to the Department dated December 7, 2001, he states, "The proposed regulations do not appear to be an accurate reflection of DPW's current policies. Further, the proposal does not fully implement the Department's policies on receipt of TANF after 60 months." He specifically mentions four concerns with the regulation.

It is unclear to the Commission why the program areas outlined by Senator Hughes were not included in the proposed rulemaking. Since these provisions were not included in the proposed regulation, we have three concerns. First, current Department practice conflicts with the language in the regulations. Does the Department intend to continue these policies, or rescind them when the final-form regulation is implemented? Second, if the policies are to be retained, they should be promulgated as regulations because the regulations in place will supercede the policies. Third, if the Department intends to retain these policies, how will the Department implement them in conjunction with this final-form regulation?

Maximize employment

Throughout this regulation, individuals are required to "maximize" employment. The Public Welfare Code at 62 P.S. § 405.1(a.2) requires an individual to work 20 hours a week, but it does not include the requirement to "maximize" employment. To be consistent with the statute, the requirement to "maximize" employment should be deleted from the following sections:

- Section 125.1(f)(2)(vi)
- Section 133.23(a)(1)(vi)(B)(VI)

- Section 141.41(e)
- Section 141.61(a)(1)(xv)
- Section 165.1(a)
- Section 165.2
- Section 165.31(b)
- Section 165.61(a)(6)

Assessment

In accordance with 45 CFR § 261.11,

...the State must make an initial assessment of the skills, prior work experience and employability of each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school.

Similarly, 62 P.S. § 405.1(a.2)(4) requires the following:

If the initial job search period concludes without the applicant or recipient obtaining full-time employment or employment for an average of at least twenty hours per week, the county assistance office, in consultation with the applicant or recipient, shall assess the additional measures that may be necessary for the applicant or recipient to seek and obtain employment, including the work-related activities that will be used to meet the on-going work-related requirement. These measures shall be incorporated into the applicant's or recipient's agreement of mutual responsibility pursuant to section 405.3.

Commentators said these assessments are important to direct recipients to programs they may not be aware of, such as courses in English-as-a-second language. An assessment could avoid sanctions under Section 165.61 for this violation. When does the Department do this assessment? The Department's procedure for assessment should be included in the regulation.

2. Section 141.41. Policy. – Consistency with statute; Clarity.

Subsection (f)

According to Federal law under 42 U.S.C. § 608(a)(7), four types of exceptions to the statutory five-year time limit are permitted.

- A state may issue a "hardship" exception to 20% of the caseload under 42 U.S.C. § 608(a)(7)(C)(ii).
- A state may provide assistance to recipients at any time using state funds under 42 U.S.C. § 608(a)(7)(F).
- "Non-assistance" is available to recipients under 42 U.S.C. § 608(a)(7)(G).
- 42 U.S.C. § 608(a)(7)(C)(i) and (iii) exempt victims of domestic violence.

The Department has implemented some of these exceptions. Why doesn't the proposed regulations reflect all of the federal exemptions?

The Department has stated that regulations dealing with the exceptions to the time limits will be promulgated in the near future. The Department should publish these proposed rulemakings as soon as possible. Then the Department should file a comprehensive final-form regulation containing all TANF-related provisions as a single final-form regulation.

3. Section 141.42. Definitions. – Reasonableness.

Family

This regulation expands the definition of "family" to include certain adult relatives other than parents. Is it the Department's intention to disqualify children from benefits based on the ineligibility for benefits of a grandmother or other non-parent caretaker? If not, the regulation should be redrafted to resolve this confusion.

4. Section 141.61. Policy. – Consistency with statute; Reasonableness; Clarity.

The statute at 62 P.S. § 405.1(a.2)(4) specifically states that all work related activity shall be incorporated into the Agreement of Mutual Responsibility (AMR). However, this section requires, as a condition of eligibility for benefits, that recipients who are not employed for an average of 20-hours per week perform work related activities "including" those specified in the AMR. The word "including," suggests the Department may require work activity that is not incorporated in the AMR. To be consistent with the statute, this requirement should be revised.

5. Section 151.43. Requirements. – Consistency with statute; Reasonableness.

Subsection (d)(1)

This requirement creates a 30-day period of ineligibility for a relative who fails to report within five days of the time that it becomes "clear" that the child's absence will extend beyond 180 days. There are two concerns. First, commentators have noted that this requirement is not found in either state or federal law. The Department should identify the statutory basis for this requirement. Second, when would it be "clear" a child's absence will extend beyond 180 days?

6. Section 153.44. Procedures. - Reasonableness.

Commentators have raised concerns that two parent families could be penalized under this regulation similar to the way they were penalized under the former AFDC program. Is it the Department's intent to carry over AFDC restrictions pertaining to two parent families?

7. Section 165.1. General. – Consistency with statute; Reasonableness; Clarity.

Subsection (a)

Similar to our concern with Section 141.61, in addition to participants completing the 20-hour work requirement are they also required to participate in "other work-related activities"?

8. Section 165.2. Definitions. – Consistency with statute; Reasonableness; Clarity.

Maximize employment

To be consistent with the statute and with our suggestion to delete all references to the term “maximize employment,” this definition should also be deleted.

9. Section 165.21. Enrollment. – Consistency with statute; Reasonableness; Clarity.

Subsection (c)(2)

The requirements of this section are inconsistent with 42 U.S.C. § 607(e)(2)(A). Under Federal Statute, a person may not be sanctioned because of the, “unavailability of appropriate child care within a reasonable distance from the individual’s home or work site.” However, this regulation does not include this exception. To be consistent with federal statute, this exception should be included in the final-form regulation.

Also, to be consistent with 45 CFR § 261.56 (b)(2)(ii), the Department should define the terms, “appropriate child care,” and “reasonable distance.”

10. Section 165.25. Enrollment after an exemption ends. – Consistency with statute; Reasonableness; Clarity.

Notice

This section deals with enrollment in work or work-related activities after the period of exemption ends for TANF recipients. The Department has stated that notices are sent out to participants when their period of exemption is ending. Will the Department continue its existing practice of notifying these recipients in writing? If so, the regulation should reflect this.

Paragraph (2)

This section states that a participant that is exempt from RESET is required to participate, “as soon as alternate child care arrangements are available.” Commentators have suggested that this provision might force parents to send their children to unsafe childcare providers. Commentators cite 45 CFR § 261.56(b)(2)(ii) that includes the term “appropriate” when describing alternate childcare arrangements. To be consistent with federal regulations, the Department should add the word “appropriate” before “alternative child care arrangements,” and define the term.

11. Section 165.31. RESET participation requirements. - Consistency with statute; Need; Clarity.

Use of the word “approved”

Throughout this section, the word “approved” is used in reference to:

- An “approved work-related activity”

- An “approved vocational education, general education, English-as-a-second language and job skills training” or
- “...the following activities, as approved by the Department.”

The word “approved” is used Subsections (c), (c)(2), (c)(3), (d)(1) and (f)(4). In contrast, the statute does not use the word “approved.” For example, the statute defines “work-related activity” and has lists of training and other activities (See 62 P.S. §§ 402, 405.1(a.2)(5), and 405.1(a.2)(6)). If approved refers to activities in the AMR, language should be added to the regulation to clearly state the activity must be in the individual’s AMR. Otherwise, what review process does the Department envision for these work activities and how is a requirement that these activities be approved consistent with the statute?

Subsection (c) First 24 months.

Paragraph (2) lists work-related activities, subject to the limitations in Paragraphs (3) and (4). However, the list and paragraphs do not include all of the limitations found in the definition of “work-related activity” in 62 P.S. § 402. For example, Subparagraph (2)(vii) of the regulation lists “general education,” that is later modified by Paragraph (4) for age limitations. However, 62 P.S. § 402 limits general education “subject to the individual maintaining satisfactory progress as defined by the school or education program.” The requirements in the regulation should be consistent with 62 P.S. § 402. Further, clarity would be improved by consolidating Paragraphs (2), (3) and (4) into one paragraph.

Subsection (d) After 24 months.

The list in 165.31(d)(1) is identical to 62 P.S. § 405.1(a.2)(6) with the exception of the reference to “unsubsidized employment.” What is “unsubsidized employment”? The same question applies to the use of the reference in Section 165.61(a)(10)(i).

Paragraph (d)(2) states that “...failure to comply with the requirements of this section, without good cause, will result in the imposition of sanctions as set forth in § 165.61.” In addition to referencing sanctions in Section 165.61, this section should also reference the compliance review process in Section 165.51, which is required by 62 P.S. § 405.1(a.2)(6).

Subsection (f) Self-initiated education or training.

It is unclear why this subsection is being expanded by adding conditions in Paragraphs (4) and (5). Paragraphs (4) and (5) restate the requirements of Subsections (c) and (d). It is further questionable whether Paragraphs (1), (2) and (3) are needed. For example, what is the purpose of requiring a person to attend at least half time as required by Paragraph (1)? Why is vocational training or technical training limited to pregnant females or a custodial parent as required by Paragraph (3)? Since self-initiated education must be approved, it may be sufficient to state the self-initiated programs must meet the requirements of Subsections (c) or (d).

Special allowances for support services

Special allowances for support services covers “items and services as determined by the Department to be necessary to enable a participant to prepare for, seek, accept or maintain education, employment or training.” (See 55 Pa. Code § 165.2.) However, Section 165.31 does not specify whether special allowances for support services are available to RESET participants. Are special allowances for support services available to all RESET participants, including those pursuing education? Will the AMR include a description of the special allowances for support services available?

12. Section 165.51. Compliance review. - Reasonableness; Clarity.

Subsection (a)

This subsection requires a caseworker to “consider the recipient’s schedule, including work and school obligations” when scheduling a compliance review. This requirement is vague. If the recipient has a conflict with the time chosen by the caseworker, is the caseworker required to set another time? How much notice must the caseworker give prior to scheduling a compliance review?

Subsection (c)

A cross reference should be added to this section establishing the mechanism a recipient can use to appeal an adverse decision rendered by a caseworker that results in sanctions.

This section also does not directly tie the phrase “good cause” to the considerations in Section 165.52. A cross reference should be added.

13. Section 165.61. Sanctions. - Consistency with statute; Clarity.

Subsection (d)

This section is consistent with 62 P.S. § 432.3(b), except that the regulation includes a limitation to the first 24 months. To be consistent with the statute the phrase “during the first 24 months that assistance is received” should be deleted.

14. Section 165.71 Notification. - Reasonableness.

Subsections (a) and (b) require notice from the Department, but do not specify when this notice must be sent. Time frames should be added to these subsections so that a recipient, or former recipient, can act in a timely manner to get reinstated when a sanction period ends.

15. Section 183.71. Gross Income Test. - Reasonableness; Clarity.

Subsection (a)

This subsection requires an income test of applicants, but not current recipients. A commentator claims this is unfair and could encourage working families not to leave the TANF program to

preserve eligibility time, because a break of even one month could disqualify these families from further benefits. The Preamble does not clearly explain the reasoning behind this change. Why does the Department only apply this test to applicants?

16. Section 187.22. Definitions. - Clarity; Reasonableness.

Budget group

This definition states, "One or more related or unrelated individuals who occupy a common residence...and whose needs and eligibility are *considered together* in determining eligibility for cash assistance..." (Emphasis added). Would this definition discourage support from a non-custodial parent if that support must be included in the budget group income?

17. Section 187.25. Notification to the Applicant or Recipient. - Reasonableness.

Subsection (a) states "...the CAO will provide oral and written notice of the cooperation requirements to the applicant or recipient." However, the next sentence only requires written notice. The Department should include the same requirements for oral and written notice in Subsection (a).

18. Section 187.27. Waiver of Cooperation For Good Cause. – Clarity; Reasonableness.

Subsections (b) and (c)

The term "corroborate" is used in Subsections (b) and (c) to prove good cause. However, the term "verification" is used in Subsection (b)(1)(vii) and in the second sentence of Subsection (c)(4)(i). There are two concerns. First, for clarity, the same term should be used throughout Subsections (b) and (c). Second, why is the term "corroborate" used rather than the term "verify"?

Subsection (b)(1)(vi)

The final sentence in this subparagraph provides an important safeguard. However, this provision may be more appropriate and effective at the end of Subsection 187.27(b)(2).

Subsection (b)(1)(vii)

This subparagraph requires "the person with domestic violence training" to complete the good cause waiver application. However, commentators state that the Department and the Domestic Violence Task Force agreed that the CAO would complete the waiver application, working with the recipient. What qualifications must a person have to complete the good cause waiver application?

Subsection (c)(3)

This subsection, in part, states, "the CAO, Court of Common Pleas, or the DRS will establish the expiration of the waiver." However, under 42 U.S.C.A. § 602 (7)(A)(iii), a state may "...waive, pursuant to a determination of good cause, other program requirements such as time limits (for

so long as necessary) for individuals receiving assistance...” A commentator states that currently good cause waivers do not have a set expiration date, but rather the waiver is reevaluated every six months. Is a set expiration date as opposed to a six month review needed for a good cause waiver? Can an expired waiver be reinstated?

Subsection (c)(4)(i)

This subparagraph is not clear. The first sentence does not require any additional corroborative evidence for a good cause waiver as long as the situation has not changed. However, the second sentence states, “the recipient must establish that continuation of the good cause waiver is necessary by providing verification of good cause....” These requirements are contradictory and should be revised to state the Department’s intent.



DEC. 20. 2001 4:39PM
DEC-20-2001 THU 03:05 PM

DPW OFFICE OF LEGAL COUNSEL

FAX NO.

NO. 530

P. 1/1

P. 01

INDEPENDENT REGULATORY REVIEW COMMISSION

RECEIVED
2001 DEC 20 PM 3:32
INDEPENDENT REGULATORY
REVIEW COMMISSION

To: Stephanie Shubert
Thomas G. Vracarich
Ruth O'Brien, Esq.

Agency: Department of Public Welfare
Phone: 7-6398; 3-2209; 7-6625
Fax: 2-0717

From: Kristine M. Shomper
Deputy Director for Administration
Company: Independent Regulatory Review
Commission
Phone: (717) 783-5419 or (717) 783-5417
Fax: (717) 783-2664

Date: December 20, 2001
of Pages: 10

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Public Welfare's regulation #14-472 (#2224). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: CY. **Date:** 12-20-01

All 10 pages read