Pennsylvania Association of Resources
Autism • Intellectual Disabilities

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301 North Office Building,
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Re: Comments on Proposed Rulemaking for the Lobbying Disclosure Act (Act 134 of 2006) Published in the January 19, 2008 Issue of the *PA Bulletin*

Dear Mr. Boyle,

Thank you for the opportunity to provide comments and make recommendations on the above-referenced proposed rulemaking.

The Pennsylvania Association of Resources for Autism and Intellectual Disabilities (PAR) is a 501(c)(3) nonprofit educational organization that supports over 45,000 individuals with intellectual disabilities as well as over 8,000 people on the autism spectrum who receive community services and supports through our member agencies in over 5,600 locations in the Commonwealth.

To carry out our mission, we frequently engage in advocacy and educational activities that seem to now be considered 'lobbying' under Act 134. In many instances, PAR is solicited for this information by legislators, administration officials, peer organizations, and members of the community. Because we are an educational organization, it is within our mission to respond to these requests.

While PAR strongly supports the goals of accountability and appropriate disclosure within the nonprofit sector, we do not support duplicative, costly, and misdirected efforts to achieve these goals. These issues are addressed in subsequent paragraphs.

To balance the need for accountability and transparency with the need for nonprofit organizations to effectively carry out their mission-critical activities involving education and advocacy, PAR recommends the following major clarification to the proposed regulations:

Recommendation: Add the following language to §57.2 "Submitting material in connection with the Regulatory Review Act and similar activities where materials are already subject to public scrutiny such as comments submitted to an agency on an administrative action, shall be exempt from reporting and registration."

This overriding recommendation is discussed in further detail below, along with our additional comments and recommendations.

Comments and Recommendations:

Section: *Fiscal Impact and Paperwork Requirements – Commonwealth, Private Sector, and Regulated Community* (pg. 444)

Discussion: The above-noted sections identify the projected fiscal impact of the proposed regulations on various groups, including the state, the private sector and the regulated community. The proposed regulations do not accurately represent the fiscal impact on the private sector/regulated community.

For the state, various costs are discussed, including personnel, operating and program expenses, office expenses, staff, and other expenses related to "fulfilling...obligations under the proposed rulemaking and the act."

For the private sector/regulated community, the proposed regulations only acknowledge the costs associated with the registration fee of $100. This estimated cost fails to take into account many other costs, similar to the costs described in the fiscal impact for the state. These compliance costs include personnel, office, operating and program expenses, in addition to the biennial registration fee. In order to comply with the act in good faith, it takes a significant effort by our staff, legal counsel, and accountants. This costs money.

Recommendation: Revise the Fiscal Impact section for the Private Sector to accurately reflect costs.

Section: *§51.1 Definitions* (pgs. 445-449)

Discussion: The definition of administrative action includes "the review, revision, approval or disapproval of a regulation under the Regulatory Review Act" (RRA). Governor Rendell's 2006 Executive Order on lobbying recognized the logic of exempting information that is already available to the public. Specifically, the Executive Order included an exemption for *"submitting material in connection with the Regulatory Review Act or similar statute where comments are already subject to public scrutiny."*

PAR recommends that the proposed regulations also adopt this exemption. PAR believes that when comments are solicited and the comments are available to the public, they should be exempt from the reporting requirements of Act 134. This would include requests for testimony by legislators and official requests for comments on draft policy statements such as a Department bulletin. While this type of information is not specifically included under the scope of the RRA, it is similar in principle as it is all publicly available information. This issue is discussed further in the section on exemptions.

Recommendation: Remove "the review, revision, approval or disapproval of a regulation under the Regulatory Review Act" from the definition of administrative action.

Discussion: There is a new definition not included in the statute for the term 'effort to influence legislative action or administrative action.' The term is defined as:

> *Any attempt to initiate, support, promote, modify, oppose, delay or advance a legislative action or administrative action on behalf of a principal for economic consideration. The term includes any of the following: (i) Paying a lobbyist or lobbying firm a retainer or other compensation, even if that lobbyist or lobbying firm does not make direct or indirect communications or take any other action. (ii) Monitoring legislation, legislative action or administrative action.*

PAR has serious concerns about this definition. First, this term is not defined in the statute and in fact exceeds the statute's requirements. The Regulations Committee in section (i) is proposing that lobbying include paying a lobbyist a retainer ***even if that lobbyist does not make direct or indirect communications.***

If a person or organization hired does not engage in direct or indirect communications, why should it be reported as lobbying? The preamble to the proposed regulations offers this explanation: "indirect communications is an effort to influence legislative action or administrative action because it is furthering the principal's intent to influence legislative or administrative action or the lack thereof." Lobbying is essentially defined as "an effort to influence legislative or administrative action." How is an effort exerted if no action – i.e. direct or indirect communication – is taken by the lobbyist? It is the Committee's conjecture that hiring a lobbyist is evidence of the "furthering the principal's intent." "Furthering the principal's intent" is not included in the definition of lobbying in the statute. **This addition is entirely inappropriate and we strongly recommend its removal from the proposed regulation.**

With regard to section (ii) of this definition, we believe this is another example of a new addition not included in the statute that exceeds the statute. The statute references monitoring only in this respect: *"Personnel expense." An expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, publications and public relations staff..."*

It is imperative for a nonprofit educational organization to stay abreast of all relevant information and this includes legislation, policy bulletins, and regulations. The daily, routine gathering of such information for educational purposes is not lobbying and we do not believe it can be legally interpreted as such.

The statute does not include monitoring in the definition of lobbying and we do not interpret the statute to mean that we must track and report all of our monitoring of legislation and administrative actions **because no effort - no communication - has taken place.** If a direct or indirect communication results from this monitoring, those communications (including personnel expenses) should be reported per the statute.

Before or while reviewing information, a person would have no idea whether or not an "effort to influence legislation action or administrative action" (i.e. lobbying) would result from having the information. Once the person acts on the information and undertakes an effort to influence, then lobbying has begun and appropriate reporting should follow. Before that point, it is neither reasonable nor legally sound to require reporting. We also question whether the intent of the law was to capture the advocacy and educational efforts nonprofits engage in routinely, particularly since almost all of this information is already in the public domain.

Recommendation: Delete the following statements "*The term includes any of the following: (i) Paying a lobbyist or lobbying firm a retainer or other compensation, even if that lobbyist or lobbying firm does not make direct or indirect communications or take any other action. (ii) Monitoring legislation, legislative action or administrative action.*"

Section: *§57.2 Qualifications for exemption* (pgs. 459-460)

Discussion: The proposed regulations state, "To the extent an individual or entity, which is otherwise required to register and report under the act, engages in those activities, the individual or entity does not qualify for the exemption under this subsection."

It would be more straightforward to simply exempt the activities of testifying and providing comments already subject to public scrutiny. This straightforward exemption also seems to be more in line with Act 134, which does not include the above statement.

Recommendation: Delete the following statement from §57.2 (a)(1) "To the extent an individual or entity, which is otherwise required to register and report under the act, engages in those activities, the individual or entity does not qualify for the exemption under this subsection." Add the following statement to §57.2 (a)(1) "Submitting material in connection with the Regulatory Review Act and similar activities where materials are already subject to public scrutiny such as comments submitted to an agency on an administrative action, shall be exempt from reporting and registration."

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In addition to our comments to specific sections of the proposed regulations, PAR offers the following overall comments for the Committee's consideration.

Duplication in Law and Access to Public Information

As a 501(c)(3) exempt organization, PAR is already required to report lobbying activities and expenses to the IRS via the 990 income tax form and this information is open to the public. These lobbying activities are focused on legislation, not on the administrative activities included in the scope of Act 134. So with regard to direct and indirect communication related to legislation, Act 134 is duplicative of existing IRS requirements.

This means that nonprofits like PAR have to report their legislative activities defined as lobbying twice, which contributes to staff time and other costs that take away from dollars that could be spent on the charitable work the organization is dedicated to.

In the Regulatory Analysis Form (RAF) submitted to the Independent Regulatory Review Commission (IRRC) along with the proposed regulations, question #24 asks if the proposed regulations contain any provisions more stringent than federal standards. The Committee's response was no. This response is not accurate. As noted above, the IRS's requirements for lobbying by nonprofits are not as stringent as the state law, considering the IRS only requires reporting legislative activities and not administrative.

PAR realizes that the law is in effect and that nonprofits are not exempt from its requirements. However, we want the Committee to understand the duplication that exists for the nonprofit sector; this issue also informs our subsequent comments and recommendations.

Economic Impact

Recent statistics from the National Center for Charitable Statistics (NCCS) indicate that there are over 62,000 nonprofit organizations in Pennsylvania alone. Nationally, most nonprofits are small

(78% of public charities had budgets under $100,000 according to recent NCCS statistics[1]) and this trend is reflected at the state level.

In 2007, according to NCCS statistics, nearly 73% of registered 501(c)(3) public charities in Pennsylvania had revenues of less than $100,000. 8% had revenues between $100,000 - $250,000. This means that approximately 81% of public charities in Pennsylvania fall well under the $250,000 revenue mark. Clearly, the majority of nonprofits in the state are operating on relatively small budgets and don't have a lot of money to spend on non-core functions.

In PAR's office alone, we estimate the amount spent on reading and analyzing the lobbying law and related materials (which included the assistance of outside legal counsel as well as work by our internal compliance officer), developing compliance methods for tracking and reporting, and staff training, to be several thousand dollars. It is difficult to continue to take this kind of money away from our core mission.

As stated previously, PAR does not oppose transparency and accountability within our sector. However, the financial difficulties many nonprofits face in meeting their mission do not need to be exacerbated by any interpretation of the lobbying law that is not absolutely essential.

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In summary, we respectfully request the following clarifications and revisions to the proposed regulations:

1. Exempt activities covered under the Regulatory Review Act and already subject to public scrutiny
2. Provide a true estimate of costs for the regulated community
3. Ensure the regulations do not extend beyond the scope of Act 134 and delete the proposed provisions that do extend beyond its scope

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Thank you for considering our comments and recommendations.

Sincerely,

Shirley A. Walker

Shirley A. Walker
President and CEO

Cc: James Smith, Regulatory Analyst, Independent Regulatory Review Commission

[1] http://nccsdataweb.urban.org/