

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency

Department of Public Welfare
Office of Income Maintenance
Bureau of Policy

(2) Agency Number: 14-513

Identification Number:

IRRC Number: 2713

INDEPENDENT REGULATORY
REVIEW COMMISSION

2010 MAR 11 AM 10:58

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(3) Short Title:

Family Violence Option

(4) PA Code Cite:

55 Pa Code Chapter 108
55 Pa Code Chapters 187

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Edward Zogby, Director

Bureau of Policy, Room 431, Health & Welfare Building, Harrisburg, PA 17105

Phone: 717-787-4081

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Email: ezogby@state.pa.us

Secondary Contact: Melinda Marciano, Director

Division of Welfare Reform Initiatives, Room 230, Willow Oak Building,
Harrisburg, PA 17105

Phone: 717-772-7829

Fax: 717-772-6451

Email: mmarciano@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of this final-form rulemaking is to add a new Chapter 108 (relating to family violence and TANF and GA) to Title 55 of the Pennsylvania Code. This addition codifies requirements relating to victims of domestic violence who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) or General Assistance (GA) cash assistance programs.

The final-form rulemaking also amends 55 Pa Code Chapter 187 (relating to support from relatives not living with the client) by deleting regulations relating to domestic violence that are incorporated into Chapter 108.

The Department will apply the policies in this final-form rulemaking to help identify victims of domestic violence, refer them to appropriate services, waive certain TANF or GA program requirements when appropriate, and protect the confidentiality of domestic violence victims.

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: September 15, 2008
- B. The date or dates on which public meetings or hearings will be held: No public meetings or hearings are scheduled.
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: April 2010
- D. The expected effective date of the final-form regulation: Upon publication as final in the Pa.B.
- E. The date by which compliance with the final-form regulation will be required: Upon publication as final in the Pa.B.
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

(10) Provide the schedule for continual review of the regulation.

The Department will evaluate the effectiveness of this regulation on an ongoing basis.

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Sections 402(a)(7) and 408(a)(7)(C) of the Social Security Act (42 U.S.C.A. §§602(a)(7) and 608(a)(7)(C)), 45 CFR §264.1(c) (relating to what restrictions apply to the length of time Federal TANF assistance may be provided); Sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. § 201(2) and 403(b); 23 P.S. §§4371-4381, 7312, 8309.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This final-form regulation is not mandated by a Federal or state law, court order or regulation but is an optional provision in Federal law. Although these rules are discretionary, the Department has the regulatory authority to promulgate this regulation under 42 U.S.C.A. § 602(a)(7) (relating to eligible states; state plan).

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Concerned about the pervasiveness of domestic violence and its impact on families needing assistance, Congress addressed these issues in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) under the "Family Violence Option" (FVO) at 42 U.S.C.A. §§ 602 (a)(7) and 608 (a)(7)(C)(iii) (relating to prohibitions; requirements). The Department recognizes that clients may rely on public assistance as they try to escape domestic violence, address safety issues and become financially independent of abusive partners or family members.

States that adopt the FVO may waive one or more public assistance program requirements for a victim of domestic violence if complying with those requirements would make it more difficult for the victim to escape domestic violence, unfairly penalize the individual or place the individual at risk of further domestic violence. Waiver of a program requirement, such as the TANF requirement to take support action against an absent parent who may be the abuser, can reduce the risk of further domestic violence to the victim.

This final-form rulemaking will, therefore, benefit TANF and GA applicants and recipients who are victims, have been victims, or are at risk of further victimization due to domestic violence.

Individuals who disclose domestic violence will be referred for appropriate voluntary counseling and supportive services. Those who receive waivers of the 60-month time limit for receipt of TANF benefits will have more time to avail themselves of programs and supportive services that are designed to move them toward self-sufficiency.

Approximately 3,909 individuals currently receiving cash assistance have good cause waivers for child support or work requirements.

Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

No scientific data, studies or references were used to justify this regulation.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No one will be adversely affected by the regulation.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

This regulation is designed to identify and help individuals with a history of domestic violence, not to require compliance.

MS 7/15/09

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no new costs or savings to the regulated community associated with compliance with this final-form regulation. No new legal, accounting or consultant procedures are required.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required.

Explain how the dollar estimates were derived. There are no new costs or savings to local governments associated with compliance with this final-form regulation. No new legal, accounting or consultant procedures are required.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no new costs or savings to state government associated with compliance with this final-form regulation. No new legal, accounting or consultant procedures are required.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Cash Grants	\$478.338 M	\$254.459 M	\$258.079 M	\$268.579 M *

* Current FY funding of \$268.579 M reflects the amount published in the Governor's Recommended Budget for Fiscal Year 2009-2010.

Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This final-form regulation has no costs or budgetary impact.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

In April 1997, the Department convened the Domestic Violence/ TANF Task Force to develop strategies to implement the FVO.

The Domestic Violence/TANF Task Force, which continues to meet on a bimonthly basis, includes victims of domestic violence, representatives from the Department's Office of General Counsel, Office of Income Maintenance, Office of Children, Youth and Families, Office of Mental Health and Substance Abuse Services, Office of Administration, the Commonwealth's Department of Health and Office of Inspector General, domestic violence service agencies, the Pennsylvania Coalition Against Domestic Violence (PCADV), Women Against Abuse and legal advocates from the Women's Law Project, Community Legal Services and the Community Justice Project.

The goal of the Domestic Violence/TANF Task Force is to advise and assist the Department in the implementation of the TANF FVO. The Task Force provides input and recommendations to assist the Department in supporting victims of domestic violence, who apply for or receive TANF benefits, to achieve economic self-sufficiency.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There were no alternative regulation provisions considered. The Department's regulations needed to be amended to provide for this option under Federal law.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

This final-form rulemaking is not more stringent than federal standards.

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(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

A comparison of contiguous states indicates that the Commonwealth's policies and procedures relating to the FVO meet or exceed the policies of neighboring states. The Commonwealth's family violence policies and procedures are comparable to other surrounding states such as Maryland, New Jersey and New York all who have adopted the family violence option. Virginia, for example, did not elect to adopt the FVO and does not have equivalent policies to aid victims of domestic violence obtain waivers for program requirements. Ohio also did not adopt the FVO. In those states, however, FVO-equivalent policies may be adopted at the county level at the discretion of the county. The final-form rulemaking will not put Pennsylvania at a competitive disadvantage with other states or be an incentive for health and human service providers or individuals to leave Pennsylvania.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This final-form rulemaking will not affect any other regulations of the promulgating agency or other state agencies.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

A new consent form is required to allow the Department to release information under § 108.14 (relating to safeguarding information). This form will be developed by the Department.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

This final-form rulemaking includes all the special provisions that apply to victims of domestic violence and their families.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By: _____
(Deputy Attorney General)

Date of Approval

Check if applicable
Copy not approved.
Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF PUBLIC WELFARE

(Agency)

LEGAL COUNSEL: Andrew Clark

DOCUMENT/FISCAL NOTE NO 14-513

DATE OF ADOPTION: _____

BY: [Signature]

TITLE: **SECRETARY OF PUBLIC WELFARE**
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: [Signature]

Andrew C. Clark
MAR - 4 2010

Date of Approval

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF FINAL-FORM RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF INCOME MAINTENANCE

Family Violence Option

[55 Pa. Code Chapter 108 Family Violence and TANF and GA]

[55 Pa. Code Chapter 187 Support From Relatives Not Living With the Client]

YOU DO NOT HAVE TO SIGN THIS FORM. The Department of Public Welfare (DPW) cannot release personal information without your signed consent or unless the release of personal information is permitted or required by DPW.

Do not sign this form unless it contains:

- the name of the person requesting information about you;
- what information is being requested;
- why the person is requesting information about you.

CASE IDENTIFICATION		
CO	RECORD NUMBER	DIST.
RECORD NAME		

WRITTEN AUTHORIZATION FOR DISCLOSURE OF INFORMATION

NAME OF REQUESTOR	DATE
INFORMATION REQUESTED	
PURPOSE OF REQUEST	

I hereby authorize disclosure by the county assistance office of the above written information for myself and/or those individuals on whose behalf public assistance benefits are paid to me. It is understood that the information obtained will be used only for the purposes stated above according to 55 Pa. Code 108.14(b).

CLIENT NAME (print) SIGNATURE DATE

CAO STAFF (print) SIGNATURE DATE

Family Violence Option
Commentator List

Rev. Neil Harrison
The Pennsylvania Welfare Coalition
c/o Lutheran Advocacy Ministry in Pennsylvania
900 South Arlington Avenue, Suite 117
Harrisburg, Pennsylvania 17109

Peter Zurflieh
Community Justice Project
118 Locust Street
Harrisburg, PA 17101

Rev. Karl W. Jones, Jr., pastor
St. John's United Church of Christ
257 W. Walnut Street
Kutztown, PA 19530

Carol Goertzel
President / CEO Pathways PA
310 Amosland Road
Holmes, PA 19043

Joseph A. Quattrocchi
Executive Director
Pennsylvania Hunger Action Center
208 North Third Street
Suite 200
Harrisburg, PA 17101

Delilah Rumburg
Executive Director
Pennsylvania Coalition Against Rape
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Enola, PA 17025

Kathleen Fisher
Family Economic Security Associate
Public Citizens for Children and Youth
7 Benjamin Franklin Parkway, 6th Floor
Philadelphia, PA 19103

Susan Kelly-Dreiss
Executive Director
Pennsylvania Coalition Against Domestic Violence
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Harrisburg, Pennsylvania 17112

Howard Miskey, Esquire
Director of Advocacy
MidPenn Legal Services
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Jay Spector
President and CEO
JEVS Human Services
1845 Walnut Street, 7th Floor
Philadelphia, Pennsylvania 19103-4707

Statutory Authority

The Department of Public Welfare (Department), by this order, adopts the regulation set forth in Annex A under the authority of sections 402(a)(7) and 408(a)(7)(C) of the Social Security Act (act) (42 U.S.C.A. §§602(a)(7) and 608(a)(7)(C)), 45 CFR 264.1(c) (relating to what restrictions apply to the length of time Federal TANF assistance may be provided); sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)), and 23 P.S. §§ 4371-4381, 7312 and 8309. Notice of proposed rulemaking was published at 38 Pa. B 4514 on August 16, 2008.

Purpose of Regulation

The purpose of this final-form rulemaking is to add a new Chapter 108 (relating to family violence and TANF and GA) to 55 Pa. Code. This addition codifies requirements relating to victims of domestic violence who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) or General Assistance (GA) cash assistance programs.

The final-form rulemaking also amends 55 Pa. Code Chapter 187 (relating to support from relatives not living with the client) by deleting regulations relating to domestic violence that are incorporated into the new Chapter 108.

The Department will apply the policies in this final-form rulemaking to help identify victims of domestic violence, refer them to appropriate services, waive certain TANF or GA program requirements when appropriate, and protect the confidentiality of domestic violence victims.

Affected Individuals and Organizations

This final-form rulemaking affects applicants and recipients who are victims of domestic violence. This final-form rulemaking also affects community agencies such as counseling agencies, shelters and other domestic violence service providers.

Accomplishments and Benefits

This final-form rulemaking will benefit TANF and GA applicants and recipients who are victims, have been victims, or are at risk of further victimization due to domestic violence.

Individuals who disclose domestic violence will be referred to appropriate voluntary counseling and supportive services. Individuals who request and receive a waiver of TANF or GA program requirements may be temporarily excused from those requirements when compliance could jeopardize their safety, make it more difficult for them to escape domestic violence or place them at risk of further violence. Individuals who receive waivers of the 60-month time limit on receipt of TANF benefits will have

more time to avail themselves of programs and supportive services that promote self-sufficiency. Approximately 3,909 individuals currently receiving cash assistance have good cause waivers for child support or work requirements.

According to a study by Richard Tolman and Jody Raphael in “A Review of the Research on Welfare and Domestic Violence” *Journal of Social Issue* and Sharmila Lawrence’s issue brief titled “Domestic Violence and Welfare Policy: Research Findings That Can Inform Policies on Marriage and Child Well-Being” from the Research Forum on Children, Families, and the New Federalism National Center for Children in Poverty, approximately 25% of current welfare recipients have a history of domestic violence. With the current cash assistance population, this regulation could benefit approximately 30,000 individuals and families.

Fiscal Impact

There are no costs or savings associated with this final-form regulation.

Paperwork Requirements

A new written consent form allows the Department to release information to a third party as provided under § 108.14 (relating to safeguarding information). This form will be developed by the Department.

Public Comment

Written comments, suggestions and objections were solicited within a 30-day comment period. The Department received ten public comments. All commentators expressed enthusiastic support for the adoption of this final-form rulemaking.

Commentators included the following: the Community Justice Project, Women's Law Project (WLP), Community Legal Services of Philadelphia (CLS), the Pennsylvania Coalition against Domestic Violence, the Pennsylvania Welfare Coalition, Pathways Pa, Pennsylvania Hunger Action Center, Pennsylvania Coalition Against Rape, Public Citizens for Children and Youth, JEVS Human Services and Mid Penn Legal Services. The Department also received comments from the Independent Regulatory Review Commission (IRRC).

The Department has carefully reviewed and considered each suggestion and comment and thanks the organizations that commented on this rulemaking.

Discussion of Comments and Major Changes

Following is a summary of the comments received during the public comment period following publication of the proposed rulemaking and the Department's response to the comments. A summary of changes from the proposed rulemaking is also included.

Statutory Authority

IRRC notes that the Department cited the following as its authority for promulgating this proposed rulemaking: two sections of the Public Welfare Code, two full titles of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the majority of three full chapters of the Domestic Relations Code. IRRC comments that the statutory authority included in the proposed rulemaking is too vague to adequately explain the Department's authority to promulgate this regulation. IRRC proposed two solutions. The Department could more specifically identify the Department's statutory authority, as required by the Regulatory Review Act (71 P.S. §745.5(a)(1.1)), or it could include a brief narrative explaining how the provisions of law, as originally proposed, relate to each other to create the necessary statutory authority.

Response

The Department has revised the statutory authority to more specifically identify the Department's authority.

§108.2 (relating to definitions)

IRRC commented that the definition of "Family Violence Option" should include a cross-reference to the Federal law mentioned in the definition.

Response

The Department agrees that the definition of “Family Violence Option” should include a cross reference to Federal law and has revised the definition accordingly.

IRRC also commented that although the Department defined the term “work requirements”, the Department uses the phrases “work or work-related activities” and “work program or other work activity” that appear to mean the same thing. IRRC suggested that the term “work requirements” be used consistently throughout the regulation.

Response

To clarify, the Department added the definition of “work and work-related activities” to §108.2 and revised the definition of “work requirements” to “work and work-related activity requirements.” A “work or work-related requirement” refers to the requirements set forth in Chapter 165 (relating to Road to Economic Self-Sufficient through Employment and Training (RESET) Program), such as hours an individual must meet; “work and work-related activities” refer to the actual activities set forth in Chapter 165.

§108.3 (relating to universal notification)

Commentators and IRRC asserted that §108.3(3)(iii) should include the phrase “education and training” and have a cross reference to the Pa. Code for eligibility for supportive services.

Response

The Department agrees and has incorporated the phrase “including education and training” (renumbered paragraph 6) and added a cross reference to Chapter 165 (relating to Road to Economic Self-Sufficiency Through Employment and Training (RESET) Program) for eligibility for supportive services.

§108.5 (relating to individual notification)

Commentators recommended that the Department revise §108.5(b)(3) by replacing the phrase “reducing benefits” with the phrase “imposing a sanction.” They state that while the Department’s current method of child support sanction is the reduction of benefits, this may not always be the case. Use of the term “imposing a sanction” will ensure the regulation will not become obsolete if the sanction changes in the future.

Response

The Department agrees with this comment and has revised §108.5(b)(3) accordingly.

Commentators suggested that the Department amend §108.5(c) to clarify that the Department will provide written notification of the right claim a good cause based on domestic violence to individuals who formerly disclosed domestic violence unless the recipient notifies the Department in writing that written notification may place the recipient at risk of further domestic violence.

Response

The Department agrees with this comment and has revised §108.5(c) accordingly.

Commentators recommended that the Department revise §108.5(d)(2) by adding the phrase “and procedure for requesting” to ensure that individuals understand not only the availability of good cause waivers but also how to obtain a waiver.

Response

The Department agrees with this comment and has revised §108.5(d)(2) accordingly.

Commentators suggested that the Department revise §108.5(e) to clarify that the Department will provide oral notification of the right to claim good cause based on domestic violence at application and renewal interviews.

Response

The Department agrees with this comment and has revised §108.5(e) accordingly.

§§108.10 (relating to verification)

IRRC asked that the final-form regulation specify how an individual can obtain the verification form provided by the Department.

Response

The Department provides all forms at applicable times – in person and by mail, and at the client's request. The Department revised §108.10 to include how the individual can obtain a verification form.

IRRC also asked the Department to delete §108.10(b)(6) since subsection (b) implies that the list that follows is not a complete list.

Response

The Department agrees and has deleted paragraph 6 and has renumbered the section accordingly.

§108.11 (relating to time frames for good cause waiver determinations based on domestic violence)

IRRC questioned how the Department determined that 15 calendar days is an appropriate time frame to determine whether to grant a good cause waiver.

Response

The Department conferred with the Domestic Violence/TANF Task Force, which includes victims of domestic violence, advocates and Department staff, and jointly agreed that 15 calendar days is a reasonable time frame to decide whether to grant a good cause waiver.

§108.12 (relating to notice of good cause determination based on domestic violence)

IRRC commented that §108.12(a) is unclear as to when the Department will provide written notice of the determination regarding a good cause request and suggested that the final-form regulation state when this notice will be provided.

Response

The Department did not adopt this recommendation. During the Department's review of a request for a good cause waiver, an individual's status remains the same. Therefore, individuals are not disadvantaged while the Department reviews good cause claims. No adverse action is taken until the appeal period ends. Because the Department is already held to a 30-day time frame for making decisions in accordance with 55 Pa. Code § 125.24(c) (relating to the procedures), it is unnecessary to add an additional time frame to notify the individual about the decision. Further, it is standard policy and procedure to send a notice of eligibility determination as soon as possible after a decision is made.

Commentators note that the text of §108.12(b)(2) contains a confusing clause suggesting that the Department may not be certain of the duration of a good cause waiver. They recommend that the Department delete the clause "If the Department is

uncertain of the duration of the waiver” or revise the clause to say, “If the Department is uncertain of the duration of the need for the waiver.”

Response

The Department agrees with the commentators and has revised the clause in §108.12(b)(2).

Commentators recommended that the Department add a subsection (d) which includes cross references to regulations that identify the specific notices that should be used.

Response

The Department revised §108.12, as requested, by adding subsection (d), with cross references pertaining to notices under §§125.1 (relating to policy) and 133.4 (relating to procedures).

§108.13 (relating to review of waivers)

IRRC commented that §108.13(4) refers to an “approval process” and stated it is unclear what this “approval process” is or how it will be administered. IRRC

recommended that the Department add the “approval process” to the final-form regulation.

Response

The Department agrees that the phrase “approval process” is unclear and, therefore, deleted this language. For clarity, this language was replaced with the “Department’s decision”.

§108.14 (relating to safeguarding information)

IRRC asked that the final-form regulation specify how an individual can obtain the release of information form provided by the Department.

Response

The Department revised § 108.14 to include instructions on how the form can be obtained.

§108.16 (relating to DRS responsibility for the FVI)

Commentators suggested that the Department revise §108.16(a) to clarify the following: (1) that an individual who is in contact with the Domestic Relations Section

(DRS) may personally request an FVI be placed on the file; and (2) that the Department will electronically instruct DRS to place an FVI on a file in those counties where a personal appearance at the DRS is waived.

Response

The Department agrees with the commentators' suggested revision to §108.16(a). The Department electronically informs the DRS that a family violence code has been placed in the Client Information System (CIS), which automatically places a family violence indicator "behind the scenes" in the case record in the DRS Pennsylvania Automated Child Support Enforcement System.

IRRC commented that §108.16(b)(2) states that the DRS and other Department staff will not access a DRS file unless authorized to do so. IRRC asked who has the authority to grant these authorizations and when would they permit such authorizations.

Response

The Department and its staff are obligated to obey state laws and procedures relating to safeguarding information. Under 62 P.S. § 404, the Department has the authority to make and enforce regulations to protect confidential information that is in its possession. Only those employees properly concerned may use the records and files in performing their duties in accordance with Chapter 105 (relating to safeguarding

information). In addition, the DRS employees are under the jurisdiction of the courts of common pleas and must adhere to state law related to safeguarding domestic violence information in accordance with 23 Pa. C.S. §§ 4305 and 6112 (relating to general administration of support matters; and disclosure of address) and Chapter 67 (relating to domestic and sexual violence victim address confidentiality). The Department revised subsection (b)(2) to clarify that the DRS and other Department staff will not access a DRS file unless access to the file is needed in the performance of their job duties.

§108.17 (relating to Agreement of Mutual Responsibility (AMR))

Commentators suggested that the regulation also include language to ensure that good cause waivers based on domestic violence are Federally recognized waivers. They ask the Department to add a subsection (c) to state that the AMR serves as the services plan according to 45 CFR § 260.55.

Response

The Department agrees and revised subsection (b) to clarify that the AMR will identify the program requirement that is being waived. Additionally, the Department agreed to add subsection (c) to clarify that the AMR serves as the domestic violence services plan under 45 CFR 260.55.

In addition to the summarized changes and responses to comments, minor editorial changes were made for clarity in the following: §§ 108.3, 108.5, 108.12, 108.13 and 108.15.

Regulatory Review Act

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on **MAR 11 2010**, the Department submitted a copy of this regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In compliance with the Regulatory Review Act, the Department also provided the Committees and the IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form regulation, the Department reviewed and considered comments received from the Committees, the IRCC and the public.

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this regulation was [deemed] approved by the Committees on . The IRCC met on and approved the regulation.

In addition to submitting the final-form rulemaking, the Department has provided the IRCC and the Committees with a copy of the Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Order

The Department finds:

- (a) The public notice of intention to adopt the administrative regulation by this Order has been given under §§ 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations at 1 Pa. Code §§ 7.1 and 7.2.
- (b) That the adoption of the regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

The Department acting under the authority of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)) orders:

- (a) The regulation of the Department is adopted to read as set forth in Annex A of this Order.

- (b) The Secretary of the Department shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

- (c) The Secretary of the Department shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.

- (d) This Order shall take effect upon final publication in the *Pennsylvania Bulletin*.

ANNEX A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart A. ASSISTANCE POLICIES AND PROCEDURES

CHAPTER 108. FAMILY VIOLENCE AND TANF AND GA

GENERAL PROVISIONS

§108.1. Purpose.

This chapter establishes rules and policies that apply to victims of domestic violence who are applicants for or recipients of TANF or GA cash assistance. These policies reflect the Department's commitment to address domestic violence among welfare recipients and are based on the Department's election of the FVO, authorized under Federal law.

§108.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

DRS – Domestic Relations Section – The section of a court of common pleas responsible for establishing and enforcing support orders.

Domestic violence – One or more of the following:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual.

(ii) Sexual abuse.

(iii) Sexual activity involving a dependent child.

(iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.

(v) Threats or attempts of physical or sexual abuse.

(vi) Mental abuse.

(vii) Neglect or deprivation of medical care.

FVI – Family violence indicator – A marker placed on Department and DRS records to indicate one or more individuals in the file are victims of domestic violence.

FVO – Family violence option – An [option under] optional provision in [Federal law that allows the state] 42 U.S.C.A. § 602(a)(7) (relating to eligible states; state plan) under

which a state may elect to identify individuals with a history of domestic violence, refer them for counseling and supportive services and, upon a showing of good cause, waive one or more program requirements for these individuals.

Federal parent locator database – A National computer location system operated by the Federal Office of Child Support Enforcement, to assist states in locating non-custodial parents, putative fathers and custodial parties for the establishment of paternity and child support obligations, as well as the enforcement and modification of orders for child support, custody and visitation.

PACSES – Pennsylvania Automated Child Support Enforcement System – Pennsylvania’s single Statewide automated data processing and information retrieval system for child support enforcement under Title IV-D of the Social Security Act (42 U.S.C.A. §§ 651-669b).

Work and work-related activities - Activities set forth in Chapter 165 (relating to Road to Economic Self-Sufficiency through Employment and Training (RESET) Program)

Work and work-related activity requirements – Requirements set forth in Chapter 165 [(relating to Road to Economic Self-Sufficiency through Employment and Training (RESET) Program)].

§108.3. Universal notification.

The Department will provide applicants and recipients with information about:

(1) Policies and procedures relating to domestic violence.

(2) Referrals to domestic violence services.

(3) Good cause waivers of certain TANF and GA program requirements [including:]

[(i)](4) Specific information about program requirements [and what activities and contact with others, such as a noncustodial parent, is required] if a waiver is not requested.

[(ii)](5) Safeguards that may help the individual safely comply with program requirements, including placement of an FVI as defined in § 108.2 (relating to definitions) on Department and DRS files and other confidentiality protections.

[(iii)](6) Opportunities to participate as a volunteer in work or work-related activities, including education and training, and to receive supportive services, under §§ 165.31 and 165.41 (relating to RESET participation requirements and eligibility

for special allowances for supportive services) if the individual receives a good cause waiver.

§108.4. Written notification.

The Department will provide applicants and recipients with written notification of the information described in §108.3 (relating to universal notification).

§108.5. Individual notification.

(a) The Department will provide applicants with written notification of the right to claim good cause based on domestic violence.

(b) The Department will provide recipients[,] who have not previously disclosed domestic violence[,] with written notification of the right to claim good cause based on domestic violence as follows:

(1) Prior to referral to the DRS.

(2) When the Department has reason to believe a family or household member has been subjected to or is at risk of further domestic violence.

(3) Prior to [reducing benefits] imposing a sanction for noncooperation with child support requirements according to § 187.26 (relating to noncooperation).

(4) When compliance with work requirements as defined in § 108.2 (relating to definitions) is discussed according to § 165.51 (relating to compliance review) and prior to imposing a sanction for noncooperation with work requirements according to § 165.61 (relating to sanctions).

(5) Prior to denying, terminating, reducing or suspending benefits due to failure to comply with a TANF or GA program requirement.

(c) The Department will provide [recipients,] a recipient who [have] has previously disclosed domestic violence[,], with written notification of the right to claim good cause based on domestic violence according to subsection (b) (1)–(5) [if providing], unless the recipient notifies the Department in writing that written notification of this right would [does not] place the recipient at risk of further domestic violence.

(d) [The written] Written notification must include an explanation of:

(1) The availability of referrals for assistance for victims of domestic violence.

(2) The availability of and procedures for requesting a good cause waiver of certain TANF or GA program requirements based on domestic violence.

(3) The confidentiality protections.

(e) The Department will provide oral notification to applicants and recipients of the right to claim good cause based on domestic violence as follows:

(1) At the application and renewal interviews.

[(1)] (2) Prior to a referral to the DRS.

[(2)] (3) When the Department has reason to believe a family or household member has been subjected to or is at risk of further domestic violence.

[(3)] (4) At a compliance review [according to] under § 165.51 in which the recipient participates.

§108.6. Policy for applicants or recipients in immediate danger.

If an applicant or recipient is in immediate danger, the Department will:

(1) Provide a private space to allow the applicant or recipient to call a domestic violence hotline, if requested.

(2) Offer the applicant or recipient help in making arrangements for emergency shelter, medical care, transportation, child care and work.

§108.7. Requirements subject to waiver.

(a) The policies set forth in §§ 108.8-108.13 apply to good cause waivers of requirements for support cooperation, work, time limits, teen parents, verification and other TANF and GA program requirements, based on domestic violence.

(b) The Department may not waive the following TANF or GA program requirements except as provided in subsection (c):

(1) Minor child under § 145.41 (relating to policy).

(2) Specified relative under § 151.41 (relating to policy).

(3) Income under § 183.5 (relating to income verification).

(4) Resources under § 177.1 (relating to general requirements).

(5) Citizenship under § 149.23 (relating to requirements).

(6) Deprivation under § 153.41 (relating to policy).

(7) Enumeration under § 155.2 (relating to general).

(8) Identity under § 125.1 (relating to policy).

(9) Criminal status under sections 432(9) and 481.1 of the Public Welfare Code (62 P.S. §§ 432 (9) and 481.1) regarding eligibility; false statements; investigations; and penalty.

(10) Residency under § 147.23 (relating to requirements).

(11) GA categorical eligibility requirement under § 141.61 (relating to policy).

(12) Signature on required forms, such as the application for benefits and authorization for release of information form under § 125.1.

(13) Permanent sanction under § 165.61 (relating to sanctions).

(14) Application for and cooperation in establishing eligibility for potential income under section 432.21(a) of the Public Welfare Code (62 P.S. §

432.21(a)) regarding requirement that certain Federal benefits be the primary source of assistance.

(c) The Department will determine whether to approve a request to waive one or more requirements in subsection (3)-(14)(b) on a case-by-case basis.

§108.8. Claiming good cause based on domestic violence.

(a) An individual may request a good cause waiver of a TANF or GA program requirement based on past, present or risk of further domestic violence, as defined in § 108.2 (relating to definitions).

(b) The Department will grant a good cause waiver of a TANF or GA program requirement if compliance with the program requirement would result in one of the following:

(1) Making it more difficult for the individual or family member to escape domestic violence.

(2) Placing the individual or family member at risk of further domestic violence.

(3) Unfairly penalizing the individual or family member because of domestic violence.

(c) The Department may grant a good cause waiver regardless of whether the alleged abuser is in the household.

§108.9. Time Limits.

(a) An applicant or recipient may receive up to 12 months of TANF cash assistance that do not count towards the 60-month TANF time limit according to § 141.41(d) (relating to policy) based on past, present or risk of further domestic violence to the individual or family member. The months need not be sequential.

(b) Individuals may receive Extended TANF, as defined in § 141.52 (relating to definitions), if the individual or family member is or has been a victim of domestic violence or is at risk of further domestic violence according to § 141.53 (relating to eligibility based on domestic violence).

(c) Individuals may be eligible for cash assistance under this section regardless of whether the alleged abuser is in the household.

§108.10. Verification.

(a) An individual who requests a good cause waiver of a TANF or GA program requirement based on domestic violence shall complete the verification form provided by the Department.

(b) The Department will provide the [individual with] verification form, in person or by mail, to an individual who requests the form and will instruct the individual to provide verification that may include one of the following:

(1) Law enforcement records.

(2) Court records.

(3) Medical or treatment records, or both.

(4) Social services records.

(5) Child protective services records.

[(6) Other records that may verify domestic violence.

(7)] (6) Third party verification from a public or private organization or an individual with knowledge of the circumstances including:

(i) A domestic violence service provider.

(ii) A medical, psychological, or social services provider.

(iii) A law enforcement professional.

(iv) A legal representative.

(v) An acquaintance, friend, relative, or neighbor of the claimant, or other individual.

(c) If the individual cannot safely obtain verification described in subsection (b), the individual may affirm on the verification form provided by the Department that the individual cannot safely comply with a TANF or GA program requirement due to domestic violence.

(d) When an individual claims good cause based on domestic violence, the Department may not:

(1) Contact the alleged abuser.

(2) Require the individual to obtain a Protection from Abuse Order.

§108.11. Time frames for good cause waiver determinations based on domestic violence.

The Department will make a good cause waiver determination within 15 calendar days from the date the claim was initiated by the applicant or recipient.

§108.12. Notice of good cause waiver determinations based on domestic violence.

(a) The Department will provide written notice to the individual of its determination regarding the good cause waiver request.

(b) If the Department grants the waiver request, the notice will:

(1) State the program requirement being waived.

(2) Explain the duration of the waiver. If the Department is uncertain of the duration of the need for the waiver, the notice will explain that the waiver will remain in effect as long as necessary, subject to review every 6 months.

(c) If the Department denies the waiver request, the notice will:

(1) State [the] which program [requirement is] requirements are not waived and the basis for the determination.

(2) State the legal authority for the denial.

(3) Explain the right to appeal.

(4) State what additional verification or information is needed to substantiate good cause and the time frame in which the information shall be provided.

(5) Explain that the individual shall comply with the program requirement for which the waiver was requested.

(d) The Department will follow the notice requirements in §§ 125.1 and 133.4 (relating to policy; and procedures).

§108.13. Review of waivers.

When the Department determines that a waiver of a TANF or GA program requirement based on domestic violence is appropriate, it will grant the waiver for as long as necessary, subject to review every 6 months as follows:

(1) An individual who verified domestic violence under § 108.10(b) (relating to verification) need not provide new or additional verification at the 6-month review if circumstances have not changed since the waiver was initially granted or since the last 6-month review.

(2) An individual who affirmed domestic violence under § 108.10(c) may provide verification [as listed] under § 108.10(b) [to have] for the waiver to continue.

(3) An individual who affirmed domestic violence but remains unable to provide verification under § 108.10(b) may again affirm domestic violence on the verification form provided by the Department under § 108.10(c). The individual may receive a waiver for an additional 6 months.

(4) An individual who remains unable to provide verification under §108.10(b) after 12 months, may have the waiver continue by affirming domestic violence under §108.10(c), subject to approval by the Department on a case-by-case basis. The individual's waiver and benefits will continue pending the [approval process] Department's decision. If the waiver is approved, the individual may, if necessary, continue to affirm at each subsequent 6-month redetermination.

§108.14. Safeguarding information.

(a) Unless required by law or pursuant to the individual's written authorization, the Department may not disclose or release the following information about an applicant, recipient or family member who has disclosed domestic violence, has a Protection from Abuse Order or is at risk of further domestic violence by the disclosure of information:

(1) The residential address, the name and address of the individual's employer, education, training, or work program or other work activity, the name and address of the children's school and the identity and location of child care or medical providers.

(2) Whether the individual or family member is living in a domestic violence shelter and location of the shelter.

(3) The amount of benefits received by the individual or family member.

(b) The individual's written authorization must be provided on a form approved by the Department. The form may be provided to the individual in person or by mail. The form must include the name of the requestor, the information requested and the purpose of the request.

(c) The Department will place an FVI, as defined in § 108.2 (relating to definitions), on the electronic and paper files of an individual or family member who has disclosed domestic violence, has a Protection from Abuse Order or is at risk of further physical or emotional harm by the disclosure of confidential information.

§108.15. Alternate address.

(a) A victim of domestic violence may use an alternate mailing address if one of the following applies:

(1) The individual has applied for or received a good cause waiver based on domestic violence.

(2) The individual is at risk of further domestic violence.

(3) The individual is a participant in the Address Confidentiality Program administered by the Pennsylvania Office of Victim Advocate[. See], under 37 Pa. Code Chapter 802 (relating to Domestic and Sexual Violence Address Confidentiality Program).

(b) The Department will ask an individual who discloses domestic violence, has applied for or received a good cause waiver or is at risk of domestic

violence, whether it is safe to send mail to the home address or whether it would be safer to send mail to an alternate address.

§108.16. DRS responsibility for the FVI.

(a) The Department will instruct the DRS to place an FVI in PACSES, as defined in § 108.2 (relating to definitions), for an individual who receives cash assistance and discloses domestic violence.

(1) For individuals who make a personal appearance at the DRS and request an FVI be placed in their files, the DRS shall place the FVI in PACSES.

(2) For individuals in counties in which a personal appearance at the DRS is waived, the Department shall electronically inform the DRS that a FVI was placed on the automated client information system and directs DRS to place the FVI on PACSES.

(b) If the FVI is placed on the file:

(1) The DRS will not disclose information according to § 108.14 (relating to safeguarding information).

(2) The DRS and other Department staff will not access a DRS file unless [authorized to do so] access to the file is needed in the performance of their duties.

(3) The DRS will transmit the FVI to the Federal parent locator database as defined in § 108.2.

§108.17. Agreement of Mutual Responsibility (AMR).

(a) To ensure confidentiality, the Department will not record information about domestic violence on the AMR, as defined in § 123.22 (relating to definitions).

(b) If the Department has waived a TANF or GA program requirement based on domestic violence, the Department will [record on the AMR that a waiver of that requirement has been granted, but not] identify the specific requirement that is being waived on the AMR. The AMR will not include the basis for the waiver.

(c) The AMR serves as the domestic violence service plan in accordance with 45 CFR 260.55 (relating to what are the additional requirements for Federal recognition of good cause domestic violence waivers?)

§108.18. Referral for services.

When an applicant or recipient discloses domestic violence or requests a referral to domestic violence services, the Department will provide the individual with names, phone numbers and information about the services of local domestic violence agencies, which may include shelter, safety planning and counseling.

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Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 187. SUPPORT FROM RELATIVES NOT

LIVING WITH THE CLIENT

SUPPORT PROVISIONS FOR CASH ASSISTANCE

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§187.22. Definitions.

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[Domestic violence]—One or more of the following:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual.

(ii) Sexual abuse.

(iii) Sexual activity involving a dependent child.

(iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.

(v) Threats of, or attempts at, physical or sexual abuse.

(vi) Mental abuse.

(vii) Neglect or deprivation of medical care.]

* * * * *

§187.27. Waiver of cooperation for good cause.

(a) *Good cause circumstances.* Cooperation requirements may be waived for good cause. [Good] Requirements for granting a good cause waiver based on a claim of domestic violence, as defined in §108.2 (relating to definitions), may be provided under §§108.7 and 108.8 (relating to requirements subject to waiver; and claiming good cause based on domestic violence). Other good cause circumstances include the following:

* * * * *

[(4) Action to establish paternity or obtain child or spousal support would make it more difficult for the individual or family member to escape domestic

violence, as defined in §187.22 (relating to definitions), or unfairly penalize the individual who has been victimized by the violence, or who is at risk of further violence.]

(b) *Proving the good cause claim.* The applicant or recipient of cash assistance shall provide relevant verification.

evidence: (1) A good cause claim may be verified with the following types of

* * * * *

(v) Court, medical, criminal, child protective services, social services, psychological or law enforcement records [which verify domestic violence, as defined in §187.22].

* * * * *

[(vii) *Domestic Violence Verification Form.* The CAO and applicant or recipient will complete this form for all good cause claims based on domestic violence in accordance with one of the following circumstances:

(A) To accompany acceptable verification as specified in subparagraph (iv), (v) or (vi) that an applicant or recipient has provided.

(B) To grant good cause upon written consent of the applicant or recipient based on verification of the good cause claim provided by a third party on the form.

(C) To grant good cause for up to 6 months when an applicant or recipient affirms she is at risk of domestic violence and unable to safely obtain other evidence to verify the claim of domestic violence within the established time frames for providing verification.]

(2) When the [applicant or recipient of cash assistance] ~~individual~~ APPLICANT OR RECIPIENT initiates a claim of good cause, the [CAO] Department, court or the DRS may provide [assistance] help with obtaining verification. If requested by the [applicant or recipient] ~~individual~~ APPLICANT OR RECIPIENT, the [CAO] Department, court or DRS will provide [assistance] help in securing the needed evidence by advising how to obtain specific documents that may be available and by undertaking to obtain specific documents the [applicant or recipient] ~~individual~~ APPLICANT OR RECIPIENT is not able to obtain. [The CAO may not contact the

putative father or noncustodial parent to verify good cause based on a claim of domestic violence.]

* * * * *

(c) *Good cause determination.* The [CAO,] court or the DRS will make a determination within 45 days from the day the claim was initiated by the applicant or recipient of cash assistance. The Department will make a determination within 15-calendar days from the date the claim was initiated by the applicant or recipient. The [CAO] Department, court or the DRS may approve additional days for the determination to be completed.

* * * * *

(4) When good cause is determined to exist, the [CAO] Department will review the circumstances upon which the good cause determination is based, at least every 6 months.

* * * * *

[(ii) If the good cause waiver was granted based on the recipient's affirmation under subsection (b)(1)(vii)(C), and she is unable to provide verification as specified in subsection (b)(1)(iv)—(vii)(A) and (B), the CAO will make a determination of good cause based on a current assessment of the recipient's circumstances. This assessment will be completed by an individual with domestic violence training and substantiated by completion of the verification of good cause based on the domestic violence form under subsection (b)(1)(vii).]

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 14-513
SUBJECT: FAMILY VIOLENCE OPTION
AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

- Proposed Regulation
X Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

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INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

Table with columns: DATE, SIGNATURE, DESIGNATION. Includes entries for House Committee on Health & Human Services, Senate Committee on Public Health & Welfare, and Independent Regulatory Review Commission.