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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 15, 2008

Honorable Estelle B. Richman, Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, PA 17120

Re: Regulation #14-513 (IRRC #2713)
Department of Public Welfare
Family Violence and TANF and GA; and Support from Relatives Not Living With the Client

Dear Secretary Richman:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Ted B. Erickson, Chairman, Senate Public Health and Welfare Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee
Honorable Frank L. Oliver, Majority Chairman, House Health and Human Services Committee
Honorable George T. Kenney, Jr., Minority Chairman, House Health and Human Services Committee

Comments of the Independent Regulatory Review Commission



Department of Public Welfare Regulation #14-513 (IRRC #2713)

Family Violence and TANF and GA; and Support From Relatives Not Living With the Client

October 15, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the August 16, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Public Welfare (Department) to respond to all comments received from us or any other source.

1. General comments. – Statutory authority.

The Regulatory Analysis Form (RAF #9) includes in its statutory authority citations 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. Unfortunately, the scope of this information is too vague to adequately explain the Department's theory of its statutory authority to promulgate this regulation. The RAF and the preamble accompanying the final-form regulation should more specifically identify the Department's statutory authority, as required by the Regulatory Review Act. 71 P.S. § 745.5(a)(1.1). Alternatively, if it is relying on the multitude of provisions cited in paragraph 9, the Department should include a brief narrative explaining how they relate to each other to create the necessary statutory authority.

2. Section 108.2. Definitions. – Clarity.

FVO – Family Violence Option

For clarity, the Department should add a cross-reference to the federal law mentioned in this definition.

Work requirements

The Department has defined this term, yet uses phrases throughout the regulation, such as “work or work-related activities” and “work program or

other work activity,” that appear to mean the same thing. The Department should use the defined term consistently throughout the regulation.

3. Section 108.3. Universal notification. – Clarity.

Commentators assert that Subsection (3)(iii) should include “education and training.” Department staff has indicated that these would be accepted practices based on the RESET Program. Therefore, the Department should add “education and training” or a cross-reference to the RESET program to Subsection (3)(iii).

4. Section 108.10. Verification. – Implementation procedures; Clarity.

Subsection (a) states that an individual who requests a good cause waiver must complete a verification form provided by the Department. The final-form regulation should specify how an individual can obtain the form. The same clarification should be made in Section 108.14 (b).

Also, Subsection (b)(6) includes “Other records that may verify domestic violence.” This is not a clear directive for individuals requesting a good cause waiver. Because Subsection (b) implies that the list that follows is not a complete list, Subsection (b)(6) is not needed. Therefore, it should be deleted.

5. Section 108.11. Time frames for good cause waiver determinations based on domestic violence. – Reasonableness.

How did the Department determine that 15 calendar days is an appropriate timeframe to determine whether to grant a good cause waiver?

6. Section 108.12. Notice of good cause determination based on domestic violence. – Implementation procedures; Clarity.

Under Subsection (a), it is not clear when the Department will provide written notice of the determination regarding a good cause request. To improve clarity, the final-form regulation should state when this notice will be provided.

7. Section 108.13. Review of waivers. – Reasonableness; Clarity.

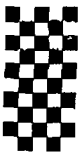
Subsection (4) refers to an “approval process.” However, it is not clear in the regulations what the “approval process” is or how it will be administered.

Further, Department staff has indicated that this “approval process” is found in the Department’s Cash Assistance Handbook at Section 108.84. We note that using a process that is only outlined in a non-regulatory document is problematic because those documents cannot be used to enforce standards contained in regulation. In addition, this approach bypasses the formal regulatory review process and the laws that govern the promulgation of regulations, thereby obstructing the public participation envisioned by the Regulatory Review Act.

Therefore, the Department should add the “approval process” to the final-form regulation.

8. Section 108.16. DRS responsibility for the FVI. – Reasonableness; Clarity.

Subsection (b)(2) states that the DRS and other Department staff will not access a DRS file unless authorized to do so. Who has the authority to grant these authorizations and when would they permit such authorizations?



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**To: Ruth D. O'Brien, Senior Assistant Counsel
Jennifer Whare, Assistant Counsel
Lisa Benedetto, Secretary to Ms. O'Brien
Stephanie Schubert**

**Agency: Department of Public Welfare
Phone: 3-2201; 3-2800; 3-2201; 7-4063
Fax: 2-0717
Date: October 15, 2008
Pages: 5**

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Public Welfare's regulation #14-513 (IRRC #2713). 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: Stephanie Hello **Date:** 10-15-08