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INDEPENDENT REGULATORY REVIEW COMMISSION

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

June 23, 2010

Honorable Harriet Dichter, Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, PA 17120

Re: Regulation #14-518 (IRRC #2833)
Department of Public Welfare
Revisions to the Special Allowance for Supportive Services Requirements; Road to
Economic Self-sufficiency through Employment and Training (RESET) Program

Dear Secretary Dichter:

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 Patricia H. Vance, Majority 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 Matthew E. Baker, Minority Chairman, House Health and Human Services
Committee
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Department of Public Welfare Regulation #14-518 (IRRC #2833)

Revisions to the Special Allowance for Supportive Services Requirements; Road to Economic Self-sufficiency through Employment and Training (RESET) Program

June 23, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the April 24, 2010 *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 – Appendix A. Work and Work-Related Special Allowances. – Fiscal and economic impact; Feasibility; Implementation procedures; Reasonableness; Need.

In the Preamble, the Department describes the “purpose” of this proposed regulation as follows:

“This proposed rulemaking accomplishes the objective of maintaining the availability of special allowances in a fiscally responsible and cost effective manner given the current economic and budget crisis. This proposed rulemaking amends both the maximum amount and the frequency for special allowances to maximize scarce resources so that funds for special allowances are available to the greatest number of participants. Under section 408(c) of the Public Welfare Code [Code] regarding meeting special needs; and work supports and incentives, the Department is required to ‘take into account availability, costs and the number of recipients needing services within the geographic area and shall seek to provide essential services to the greatest number of recipients....”

A major part of the Department’s plan for attaining its objectives is the annual and lifetime limits for special allowances in the proposed amendments to Appendix A of Chapter 165. The Department is establishing annual and lifetime limits on special allowances for work and education supportive services. These allowances include transportation, clothing, and books, supplies, tools

or equipment for education or training programs. There are three areas of issues and questions.

First, further explanation is needed of how the Department took “into account availability, costs and the number of recipients needing services within the geographic area” in determining the new limits for special allowances. The Department also needs to provide more detail as to how it examined the availability, costs or number of recipients needing services in developing the amendments to Appendix A.

Second, the Department claims that the amendments will assist in providing services to the greatest number of recipients given the current budget crisis. However, commentators claim that spending has actually decreased in these programs through the years. In addition, commentators claim that the programs costs are a very small percentage of the available block grant funding. Therefore, the Department needs to provide more detail as to why the changes are necessary to provide services to the greatest number of individuals.

Third, commentators contend that the limits will undercut participants’ efforts to obtain better employment, and ultimately the proposed changes will defeat the purpose of the allowances. For example, there is a \$1,500 annual private transportation limit. Commentators contend that between gas, repair costs, etc., it would be virtually impossible for a recipient not to exceed the limit. Other concerns are the limits on education expenses. Without these supports, commentators indicate that many will not be able to pursue educational programs that exceed more than one or two years, or go back for new or additional training or education later in their lifetimes. Employment objectives will be limited to low-paying jobs. Commentators argue that in the long run, this will impose more costs on taxpayers as fewer people will be able to permanently leave public assistance through better-paying careers.

The Department should explain its methods for determining each of the annual and lifetime limits. In addition, the Department needs to address concerns of the affected communities related to the impact of each limit on the efforts of people seeking to improve their training and education, and obtain and maintain long-term employment and self-sufficiency. The Department also should provide a thorough fiscal analysis and an explanation of both the impact of and need for this proposed regulation.

2. Section 165.1. General. – Statutory authority; Protection of public health, safety and welfare; Reasonableness; Need.

This proposed regulation amends provisions for special allowances for services for participants in the RESET program established in Chapter 165. Those exempted from RESET can also obtain special allowances. Subsection (a) permits these individuals to receive services by participating in a “work or

work-related activity” and they must “comply with the AMR [Agreement of Mutual Responsibility] and EDP [Employment Development Plan].”

Commentators contend that this language would require these volunteers to adhere to an hourly service requirement. However, Section 405.1(b) of the Code does not impose such a requirement, but states that: “**any** applicant or recipient exempted from... [RESET] may participate in employment and work-related activities.” (Emphasis added.) See 62 P.S. § 405.1(b). What is the Department’s statutory authority for Subsection (a)?

Commentators also argue this provision is not in the public interest. Examples of exempted RESET individuals include individuals with disabilities and domestic violence victims. Their circumstances could prevent them from committing to an hourly requirement. For example, a domestic violence victim, who does not want an abuser to know the victim’s whereabouts, may not want to regularly leave a safe location. A disability may prevent a person from leaving their home altogether. Therefore, how would the Department protect these individuals while maintaining the hourly requirement? The Preamble to the final-form regulation should explain the need for requiring individuals who volunteer to participate in work or work-related activity to “comply with the requirements of the AMR or EDP.”

3. Section 165.44. Verification for special allowances for supportive services. – Reasonableness; Need; Implementation procedures; Clarity.

Commentators express concern with the deletion of the phrase “only when it is not readily apparent” from the existing language in Subsection (a)(2). The Department needs to explain the need for verification for authorization of every expense. Wouldn’t the need for transportation expenses be readily apparent based on the address of the recipient and the job site or school? If not, the Department should provide examples of acceptable and readily accessible means of verification.

With respect to verification of service, Subsection (b)(1)(i) states, in part, that the Department “may require that the participant or provider or the supportive service, or both, verify that the participant received the approved special allowance for supportive services and that the provider received payment for the amount the participant was eligible to receive.” What is the need for this provision? Additionally, under what circumstances would the Department require verification from both the participant and the provider?

Subsection (b)(2) lists circumstances in which the Department will process supportive services overpayment referrals, including in Subparagraph (viii): “The participant did not participate in or comply with RESET, including meeting hourly and other work and work-related requirements as specified in the AMR or EDP.” Commentators are concerned that this language would result in overpayment referrals for full amounts, even though participants may have completed the majority of their required hours. What is the need for this

provision? Will amounts that a participant is required to repay be pro-rated based upon hours completed? Finally, there is no Subparagraph (vii), and Subparagraph (viii) therefore should be re-numbered.

4. Section 165.46. Types of special allowances for supportive services. – Economic impact; Need; Compliance with the Regulatory Review Act.

The proposed regulation eliminates the existing Subsection (c)(5), thus removing special allowances for moving costs. However, Section 432.20 of the Code specifically allows for assistance for moving costs “to ensure gainful employment.” See 62 P.S. § 432.20. Given the language in the statute and the concerns expressed by commentators, the Department should examine the economic impact of this deletion and explain the need for this change.

Proposed Subsection (c) states that: “[t]he Department may amend Appendix A as necessary based on availability of funding and demand for supportive services. Revisions will be published as a notice in the *Pennsylvania Bulletin* for recommended codification in Appendix A.”

This subsection does not comply with the requirements of the Regulatory Review Act. 71 P.S. §§ 745.1-745.15. First, regulations in this Commonwealth cannot be amended without being subject to the regulatory review process. The extensive comments filed on this proposed regulation indicate that amendments to Appendix A, which has been made part of this rulemaking, should be subject to review and comment by the public before adoption or implementation. In addition, codification cannot occur simply through notification in the *Pennsylvania Bulletin* without a regulation being reviewed and approved by both the Independent Regulatory Review Commission and the Office of the Attorney General. See *id.* at §§ 745.5b and 732-204(b). Therefore, this subsection should be removed from the final-form regulation.

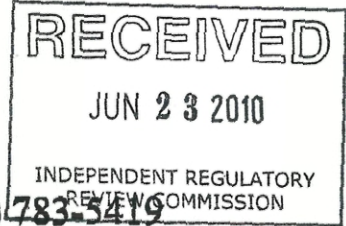


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Stephanie Schubert

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Date: June 23, 2010
Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Public Welfare's regulation #14- 518 (IRRC #2833). 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: Jen Campbell Date: 6-23-10