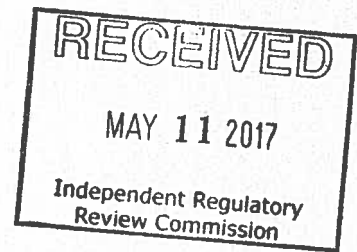


3167



COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF HUMAN SERVICES
625 Forster Street, Room 333
Harrisburg, Pennsylvania 17120



DEPARTMENT OF HEALTH
625 Forster Street, 8th Floor W
Harrisburg, Pennsylvania 17101

Pennsylvania Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Re: Pennsylvania State Civil Service Commission
Proposed Regulation #61-6
Implementation of Act 69 of 2016 and Act 167 of 2016
IRRC Identification Number 3167

Dear Commissioners:

On April 22, 2017, the Pennsylvania State Civil Service Commission (SCSC) published, in the *Pennsylvania Bulletin*, proposed regulations for Act 69 of 2016 and Act 167 of 2016. The Pennsylvania Independent Regulatory Review Commission (IRRC) 30-day comment period on the proposed regulations is open from April 22 to May 22. The Department of Human Services (DHS) and Department of Health (DOH) have serious concerns regarding the impact the proposed regulations will have on our state agencies and are providing comments to the proposed regulations. Please note that the SCSC did not contact us to solicit our input on these proposed regulations.

Last year, the General Assembly passed, and Governor Wolf signed into law, Acts 69 and 167 of 2016. These laws made very significant and important changes to the Pennsylvania Civil Service Act (the Act). In short, these statutory amendments were enacted to modernize how hiring is done through the SCSC and to improve service delivery. The changes would make it easier for candidates to apply for positions, create a larger pool of candidates from which agencies could choose, and give the agencies the ability to decide the method of examinations to be used in evaluating candidates for positions. Instead of implementing the law as written, the SCSC has decided to issue proposed regulations which will undermine the intended purpose of the laws and give the SCSC the ability to thwart the implementation of them.

Approximately 89 percent of DHS positions and approximately 96 percent of DOH positions are covered by the Act. Therefore, we have a very significant and personal stake in having the laws implemented as written and intended. We are providing the below specific examples of how the legislative changes will allow DHS and DOH to improve services and how the proposed regulations will negatively impact our service delivery.

Section 95.1. Application requirements.

Act 167 amending Section 212 (d) of the Act was amended to provide: "The commission shall enter into an agreement to utilize the form and method of an employment application that is standard across departments and agencies that are under the Governor's jurisdiction for the purpose of entrance to, or promotion in, the classified service." 71 P.S. §741.212(d).

This change to the law was made to make it easier for people to apply for state jobs by having a single site for both non-Civil Service and Civil Service positions. For Civil Service positions at DHS and DOH, this change would be important because it provides one method of application versus the current two separate methods. Changing to a single site would be beneficial for staff providing direction to applicants and for applicants completing the process. It would streamline the process, reducing duplication and effort for the applicant, which has the potential to attract more candidates. The current process deters applicants from applying for Civil Service positions. In addition, if applicants could apply on-line through a single site, we would not have to waste staff resources sending availability surveys, determining the rule of three, etc. Applicants would not need to drive to major cities, take off work, or find and pay for parking in order to take a two- to four-hour exam every time they want to test, which in some cases is over a dozen tests for an applicant every one to two years. Once an application is on file, the applicant can immediately access for updates if needed for up to one year.

Section 95.20. Authority to Select Method of Examination.

Act 167 amended Section 502 of the Act to allow the appointing authority (the agency), and not SCSC, to determine the method of the "examinations." SCSC currently uses written tests or experience and training ("E&T") to evaluate candidates for positions. However, DHS and DOH are in a better position to know how candidates can best be evaluated for our specific positions. For example, DHS would rather have candidates evaluated by E&T than written tests for Aide Trainee, Security Officer, Semi-Skilled Laborer, the entire clerical series, the entire information technology series, Attorney Examiner, Welfare Hearing Officer, Income Maintenance Caseworker, Childline Caseworker, Social Worker 1, Human Services Licensing Representatives 1 and 2, HIPP Operations Specialist, Maintenance Repairman series, Facility Maintenance Managers, Utility Plant Operators, and the entire County Caseworker series. DOH has been successful in transitioning to E&T for a large number of job classifications that are highly technical and specialized with very few positions and limited candidates for the Public Health Veterinarian, Public Health Physician, Environmental Health Specialist, Epidemiologist and Registry Specialist classifications. The single final earned rating score E&T exams allow us to consider all candidates who meet the experience and training requirements for the job title, and interviewing is not a burden for those jobs that have this, as there are relatively few candidates for those jobs

anyway. Because of the recognized benefits to using E&T exams, we would like to see an expansion of this option for many additional classifications within DHS and DOH. However, under the proposed regulations, we would be able to use E&T exams for these job titles only if the SCSC determined E&T to be an appropriate method of examination.

In addition, with written tests, candidates must take time off work and drive to one of the seven SCSC test sites for written exams. Candidates do not want to take written tests. They prefer an evaluation of their experience and training to taking a written test, and it is much easier for them to do. They can complete the application process at their own convenience, not at a set time costing them leave and travel expenses. While we cannot know exactly how many candidates do not apply due to the requirement for written testing, it is obvious that more people would apply if the process were easier for them. The SCSC's over-reliance on written exams requires a person to weigh the factors of time off from work, travel logistics, and parking expenses against the odds of testing well enough to even be reachable on a list to be considered for a job. The process makes it not worthwhile for many candidates, especially for ones living far away from the small number of testing centers in rural areas without access to public transportation. Finally, some people who are magnificently qualified simply do not test well and will be excluded from consideration of employment; while others who do test well sometimes struggle to perform the job at an acceptable level.

Section 97.11. Appointment Process – Use of Alternative to Rule-of-Three.

Act 69 amended Section 601 to allow expansion of hiring eligible lists other than the standard "Rule-of-Three." With the standard Rule-of-Three, DHS had difficulty filling certain positions such as Aide Trainee, Clerks, Clerk Typists, Income Maintenance Caseworkers, Social Workers, Security Officer 1, Registered Nurses and County Caseworkers. Each county and/or title is different with the recruiting difficulty for various reasons. A lot of time is lost if the rule-of-three does not produce desirable applicants. This could delay the filling of a vacant position or positions six to nine months or more. The ideal implementation of this for us would be a situation where the agencies could be provided with a flexible range of candidates that included both a minimum and maximum number of candidates to interview, allowing the program office to decide on a number within that range that is optimal for their specific interviewing situation. All other approaches lock agencies into an inflexible standard that must be applied in all situations, regardless of level of convenience or logic. As an example, a more flexible option could be a "Rule-of-Three-to-Ten", where the top three available eligibles is the minimum number of interviews required, up to a maximum of the top ten available eligibles from one certification list.

In addition, the regulations have onerous requirements that were not in the Act 69 amendment to Section 601.

First, the regulation requires specification of the job classification or classification series to which the alternative rule will apply. This language ignores the concept of "vacancy-based" hiring. Act 69 amended Section 602 of the Act to permit vacancy-based postings. This regulatory requirement would preclude DHS and DOH from seeking an alternative to the Rule-of-Three for vacancy-based postings. For DHS and DOH, the regulations pose a significant potential negative impact for Income Maintenance Caseworkers, as well as Aide Trainees in our state hospitals and state centers, that constitute a large number of hiring per year. We should have the ability to be flexible so we can experiment with different options to find the one that works best or even a continually changing number based on the specific vacancy or specific to the hiring manager. We are not sure how this would apply at the moment if we were able to apply this across all jobs, since we are currently not able to utilize vacancy based postings for civil service positions. This limitation would be burdensome if we had to request permission to implement this for each and every classification or class series.

Second, the regulation forces us to keep the alternative to the Rule-of-Three in place for at least 12 months, regardless if the change has negative effects on the agencies. This will dissuade DHS from using an alternative to the Rule-of-Three for Income Maintenance Caseworker, Aide Trainee, Registered Nurse, Licensed Practical Nurse, County Caseworkers, just to name a few. There will be uncertainty as to how effective the alternative Rule is until it is implemented. In the event the alternative Rule is not effective, the regulation would have DHS or DOH restricted to using the alternative Rule for at least one year. Therefore, DHS or DOH will be forced to continue using the Rule-of-Three for most or all positions instead of taking a chance on how the alternative Rule may work out for filling positions. The potential consequences of trying to change to an alternative Rule essentially discourages agencies from attempting to change the Rule-of-Three as it currently is used.

Section 98.1 and 98.2. Vacancy-Based Hiring.

Act 69 was intended to allow agencies to fill vacant positions as they occur through "vacancy-based" job postings. This is how jobs are posted in the private sector and how DHS and DOH want to post most job openings such as Income Maintenance Caseworker, Aide Trainee, Registered Nurse, Licensed Practice Nurse and County Caseworker, since these are the job titles that are vacant more frequently throughout the year. By expanding the use of vacancy-based postings, the agencies would not need to rely on strategies that appear to work around the system in order to hire the most qualified person for the position. For every position, the process would be much more straightforward with applicants, which will lead to an increase in the number and quality of applicants. Great applicants are being lost every day due to the cumbersome examination process that prevents them from applying directly for specific positions. For example, in the DOH, high caliber applicants for high level positions such as Epidemiologists, Public Health Program Managers, Health Facility Quality Examiner

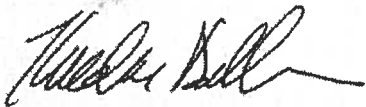
Supervisor, Registry Manager, Epidemiology Research Associate, etc., have extensive experience and often have been promoted up through the private sector's corporate ladder and are currently working in high level jobs outside of the civil service system. Requiring these applicants to take an examination just to evaluate whether they qualify for the chance at being able to be considered for a job is cumbersome and unnecessary, given their prior experience and qualifications.

In addition, DHS and DOH believe that we, and not the SCSC, are in a better position to know which jobs should be hired through vacancy-based posting. In limited instances, we have been successful in implementing a strategy of advertising for examinations and utilizing selective certifications to reach applicants with preferred skills; however, this process is awkward and inefficient for both the applicant and the agency. Agencies should be able to expand the vacancy-based posting option, as it is a more efficient way to do what has already been successful for our agencies.

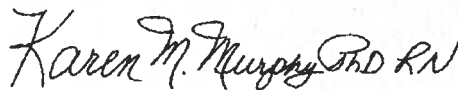
Similarly, we want to use vacancy-based postings for Civil Service positions but believe the regulation is an impediment to doing so.

DHS and DOH appreciate the Commission's review of our comments to the proposed regulations and your consideration of the many negative effects of the proposed regulations on our agencies if they are adopted as written. Please contact either of us if you need any additional information on the matters addressed in this letter.

Sincerely,



Theodore Dallas
Secretary of Human Services



Karen M. Murphy PhD, RN
Secretary of Health