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May 16, 2017

Pennsylvania Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 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, the Pennsylvania State Civil Service Commission (SCSC) had 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 Drug and Alcohol Programs (DDAP) has serious concerns regarding the impact the proposed regulations will have on us and are providing comments to the proposed regulations. Please note that 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, SCSC has decided to issue proposed regulations which will undermine the intended purpose of the laws and give SCSC the ability to thwart the implementation of them.

Approximately 90% percent of DDAP's positions are covered by the SCSC. Therefore, we have a very significant and personal stake in having the laws implemented as written and intended. Below we are providing specific examples of how the legislative changes will allow DDAP to improve services and how the proposed regulations will negatively impact our service delivery.

Section 95.1. Application requirements.

Act 167 amended 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 DDAP, this change would be important because we spend several hours each week walking job seekers through the application process. The opioid epidemic has caused many people to seek out positions in our agency as a means of giving back to the community and helping those affected by addiction. We are thankful for the interest, but spend many hours explaining the different processes for applying depending upon whether they are interested in Civil Service or non-Civil Service positions.

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, DDAP is in a better position to know how candidates can best be evaluated for our specific positions. For example, our Drug and Alcohol Licensing Specialists are positions for which a demonstration of prior experience with reading, interpreting and monitoring to policies or regulations would be a far more accurate and efficient means of determining a candidate’s qualification. Another example would be our Drug and Alcohol Program Analysts who may have years of clinical experience, but score poorly on an exam. We can’t afford to turn people away with clinical experience during a time when we are losing more than 10 Pennsylvanian’s a day to drug overdoses.

In addition, with certain types of written tests, we may have up to three employees who are designated examination raters and must spend days out of the office to review and score the written exams. With a small complement to begin with, and in a division of our agency where schedules are busy and delays result in licenses lapsing for our treatment providers, we cannot afford to utilize our valuable time for scoring exams.

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, DDAP had difficulty filling certain positions. 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 DDAP from seeking an alternative to the Rule-of Three for vacancy-based postings. For DDAP, the regulations pose a significant potential negative impact.

Second, the regulation forces us to keep the alternative to the Rule-of-Three in place for at least 12 months. There will be uncertainty as to how effective the alternative Rule is for these positions until it is implemented. In the event the alternative Rule is not effective; the regulation would have DDAP stuck using the alternative Rule for at least one year. Therefore, DDAP 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.

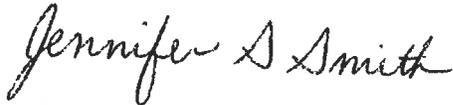
Section 98.1 and 98.2. Vacancy-Based Hiring.

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 DDAP wants to post most of its job openings.

In addition, DDAP believes that we, and not SCSC, are in a better position to know which jobs should be done through vacancy-based posting. Similarly, we want to use vacancy-based postings for Civil Service positions but believe the regulation is an impediment to do so.

DDAP appreciates the Commission’s review of our comments to the proposed regulations and your consideration of the many negative effects of the proposed regulations on this agency if they are adopted as written. Please contact me if you need any additional information on the matters addressed in this letter.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer S. Smith".

Jennifer S. Smith, Acting Secretary
Department of Drug and Alcohol Programs