

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, July 15, 2021
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The July 15, 2021 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: George D. Bedwick, Chairman
 John F. Mizner, Esq., Vice Chairman
 Dennis A. Watson, Esq.

Telephone: John J. Soroko, Esq., left at 10:55

Absent: Murray Ufberg, Esq.

II. APPROVAL OF THE JUNE 17, 2021 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the June 17, 2021 public meeting minutes, as submitted. Vice Chairman Mizner made the motion and Commissioner Watson seconded, and the motion passed 4-0.

III. NEW BUSINESS

A. ACTION ITEMS

1. No 3294 Department of Drug and Alcohol Programs #74-4: Standards for Drug and Alcohol Recovery House Licensure

Laura Campbell, Regulatory Analyst, said the regulation adopts licensure requirements for drug and alcohol recovery houses that receive funds or referrals from the Department of Drug and Alcohol Programs (DDAP) or federal, state and county agencies. She noted that it is a final-omitted regulation that requires licensees to develop and implement policies and procedures detailing how substance recovery houses are operated. Ms. Campbell noted that 17 comments were received on a previously withdrawn version of the regulation and three comments were received on DDAP's current proposed regulation. She detailed that the comments addressed the exceptions, cost to houses and residents, overly burdensome requirements and use of "certification" instead of "licensure."

The Commissioners recessed to review two comments of embargoed mail.

Jordan Lewis, Policy Director, and Dan Fellin, Chief Counsel, DDAP, were present to answer any questions.

Dr. Lewis commented that the regulation serves to fulfill Act 59 of 2017, which requires DDAP to promulgate final-omitted regulations for licensure or certification of drug and alcohol recovery houses that receive taxpayer funds or referrals. She continued that the regulation would provide for minimum standards for drug and recovery homes that wish to pursue licensure from DDAP. This would help address issues of “unscrupulous” individuals and houses that provide little to no supportive services, substandard living conditions, and that commit insurance fraud.

Dr. Lewis provided background information on the regulation and noted that a draft of the regulation was distributed via listserv to 430 stakeholders in May 2019. DDAP received over 150 unique comments on the draft, which were incorporated into the final-omitted regulation submitted to the Commission in March 2021. In response to public comments on the submitted version, DDAP withdrew the final-omitted regulation in April 2021 to thoroughly review all concerns. DDAP then submitted the current version of the final-omitted regulation in June.

Commissioner Watson asked why it took three and a half years for DDAP to deliver the final-omitted regulation. Dr. Lewis answered that the COVID-19 pandemic delayed finalizing the regulation. Commissioner Watson commented that it still took 18 months for DDAP to submit a draft to the regulated community and an additional 11 months to withdraw the original regulation from the Commission.

Commissioner Watson questioned how much the average recovery home would spend to meet the fire escape qualification of the regulation. Dr. Lewis explained that recovery homes are at various levels of compliance, but suitable fire ladders retail for about \$100 to \$150.

Commissioner Watson asked if Dr. Lewis disputes the fact that the projected cost for the implementation of the regulation based on 500 residents varies widely between DDAP's assessment and those in the industry. Dr. Lewis stated that the cost for the regulated community factors in a \$10,000 biennial audit and a \$250 initial license fee with a \$250 renewal fee. She noted that the license and renewal fees are new costs to the regulated community. Dr. Lewis explained that based on the varying level of compliance, the cost would also vary greatly.

Commissioner Watson inquired if DDAP believes that Act 59 of 2017 provides them with the authority to require licensees to hire a certified public accountant (CPA) to perform an audit. Dr. Lewis answered that she does believe the act empowers DDAP with that authority. She explained that Act 59 of 2017 created a mandatory provision for all recovery homes to have a record of all funds received and expended.

Commissioner Watson asked how the regulation addresses the obligations imposed under the recently passed Justin's Law, Act 35 of 2021. Mr. Fellin stated that the regulation was delivered to the Commission prior to the passage of Justin's Law; however, a review of the regulation has shown that there is no conflict. He added that as part of the regulation, the

application process requires DDAP to approve of a recovery home's policies and procedures and DDAP would not approve a recovery house before it is in compliance with Justin's Law.

Vice Chairman Mizner expressed regret that the regulation took three and a half years to implement and that “as a result of that people die, so every day there is a delay in this there is a human consequence.”

Chairman Bedwick explained that he wants to help the drafters of the regulation anticipate unforeseen consequences. He asked if DDAP plans to come back with amendments to the regulation in order to conform with Justin's Law. Mr. Fellin said he is comfortable with the regulation in its current form, but DDAP may issue guidance in the future.

Chairman Bedwick questioned if receiving federal or state funds already necessitates an audit at a later date. Mr. Fellin answered that it does not always require an audit and it depends on the unique funding rules and compliance.

Chairman Bedwick stated that the regulation does not require the owner of multiple recovery homes to seek licensure of all of those homes. He continued that it is possible for an individual seeking a recovery home to be confused if two locations have the same name but are located in different places. He asked if there was any consideration to require that licensed facilities have unique names.

Mr. Fellin replied that it was not considered due to the additional administrative burden it would require. He detailed that DDAP's registry will include the address of the recovery home because each location will have its own specific license.

Regarding the regulation, Chairman Bedwick explained that an end of residency policy functions as an eviction and a completion of residency operates as the normal conclusion to the residency. He stated that the small difference in those processes could be confusing if the regulation is not read in its entirety. Chairman Bedwick noted that the regulation is amending Chapter 701 relating to exceptions and revocation of exceptions and added that it seemed unnecessary when there are other provisions providing for exceptions and revocation of exemptions in new Chapter 717. Mr. Fellin answered that the regulation was written to create a parallel structure between existing regulations for licensure of treatment facilities and the licensure of drug and alcohol recovery houses. Chairman Bedwick replied that although he did not agree, he did understand.

Chairman Bedwick inquired if the regulation requires an individual to apply for a provisional license for \$250, then pay another \$250 for the provisional license. Mr. Fellin replied that Chairman Bedwick was correct and he detailed that those who qualify for the full licenses do not need to pay the second round of \$250. He stated that the regulation was written to encourage high-quality providers and dissuade those of lesser quality. Mr. Fellin clarified that those seeking recovery home licenses will fill out the same application, but if an applicant does not meet the qualifications for full licensing, that person may choose to pay an additional \$250 for a provisional license.

Chairman Bedwick noted that the regulation has created two tiers of licensure and recommended that the definition of “license” within the regulation include both types. Mr. Fellin commented that the regulation was written to parallel other extant regulations, which have been “workable and acceptable over many years.”

Chairman Bedwick pointed out that the regulation applies the license to a specifically named drug and alcohol recovery house with a discrete premise and is not transferable. However, the regulation later explains that the failure to notify DDAP of a transfer will result in the automatic expiration of the license, but does not detail how to transfer a license which seems to conflict with the earlier provision that the license is not transferable. Mr. Fellin responded that the regulation was written to conform with existing provisions that detail the transfer of licenses. The Commissioners disagreed and Vice Chairman Mizner said, “I don't think that's the way it's written.”

Chairman Bedwick detailed that the regulation uses the term “discharge”-and noted that it could lend credence to someone believing that a treatment facility and recovery house are the same. Mr. Fellin stated that the Preamble of the regulation explains that recovery homes are not treatment facilities. Chairman Bedwick recommended that the issue be addressed.

Chairman Bedwick stated that the regulation requires a licensee to report to DDAP outbreaks that would also be reported to the Centers for Disease Control and Prevention (CDC). He questioned if a recovery facility could have an outbreak of COVID-19 that would be reportable to the state Department of Health (DOH) and not the CDC. Mr. Fellin replied that the DOH is notified in all cases where an outbreak is reported through the CDC's disease surveillance system.

Chairman Bedwick recommended that an “illicit drug” be defined in the regulation in order to eliminate any confusion.

Vice Chairman Mizner asked Leslie Johnson, Chief Counsel, how long DDAP would have to review their regulation if the Commission disapproved of it. Ms. Johnson answered that DDAP would have 40 days from the time the agency receives the disapproval order issued by the Commission.

Commissioner Watson asked how many recovery homes are not required to be licensed. Mr. Fellin replied that he was unsure but there were many. Commissioner Watson asked if DDAP estimated how many recovery homes would go out of business due to the additional costs. Mr. Fellin said he was unaware of the number because the licensure inspections have not occurred. Commissioner Watson pointed out that DDAP provided a projection for how many of the 500 recovery homes would need to pay to successfully meet the licensure qualifications and they should be able to estimate how many of those homes are unable to pay that amount.

John Roberts, Executive Director and Founder, R3House, explained that his privately-funded organization has 72 beds. He said that the regulation has had a direct impact on his organization and he had to put a women's house up for sale. Mr. Roberts added that he had to turn away 35 to 40 women. He has questioned if he should close all of his homes because of the

risk and cost of the regulation. “I recognize the problem of unscrupulous actors and I wish I had an easy solution for it, but I'm not sure that the regulation as written is the answer,” he said. Mr. Roberts stated that he is most concerned about the cost of an audit. He added that residents pay \$160 for rent and receive some referrals from courts and treatment centers.

Mr. Fellin responded that the audit requirement of the regulation is mandated in Act 59 of 2017. He added that the original regulation required a yearly audit and DDAP relaxed that requirement to an audit every two years. He reiterated the need for the regulation as providing a minimal level of safety.

Commissioner Watson remarked that a delay in the governmental process in delivering regulations is unfair to businesses that cannot determine a correct course of action. He also stated that the regulation does not provide enough guidance to recovery homes.

Vice Chairman Mizner concurred with Commissioner Watson and added the audits are extremely expensive. He recommended that the regulation make recovery homes available to on-demand government audits, rather than forcing recovery homes to hire their own CPA.

Commissioner Watson made a motion for disapproval. Vice Chairman Mizner seconded, and the motion passed 4-1, with Commissioner Soroko and Commissioner Ufberg (dissenting) voting by proxy.

2. No. 3237 Department of General Services #8-27: State Metrology Laboratory Fee Schedule

Michelle Elliott, Regulatory Analyst, said the regulation amends the state metrology laboratory schedule of fees that the Department of General Services (DGS) charges for calibration, evaluation and other services. She added that a correct fee schedule ensures that the cost of services is borne by the companies rather than taxpayers.

Ken Hess, Deputy Secretary for Procurement, Janice Pistor, Chief Procurement Officer, James Gownley, Metrology Supervisor, and Mary Fox, Assistant Chief Counsel, DGS, were present to answer any questions.

Mr. Hess stated that the regulation includes an increase in the fee schedule and updates descriptions to accurately reflect the parameters and ranges covered under the National Institute of Standards and Technology. He detailed the usefulness of the laboratory and noted that the state metrology lab has not increased the fees since 2015.

Chairman Bedwick made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 5-0, with Commissioner Soroko and Commissioner Ufberg voting by proxy.

3. No. 3279 Pennsylvania Gaming Control Board #125-234: Sports Wagering

Corinne Brandt, Regulatory Analyst, stated that the regulation provides for the regulatory oversight of sports wagering in the Commonwealth. She added that one comment was submitted

on the final rulemaking regarding the posting, voiding, and cancelation of wagers and the ability of licensees to cancel wagers at their discretion if the Pennsylvania Gaming Control Board (PGCB) approves cancelation criteria beforehand.

Chad Zimmermann, Assistant Chief Counsel III, PGCB, was present to answer any questions.

Mr. Zimmermann said the regulation is based on the temporary regulations that were first enacted by the PGCB after the gaming expansion and Act 42 of 2017. He explained that PGCB feels as though sports wagering has grown and is running well. He noted that DraftKings submitted the comment pertaining to the ownership interest provision because they are a publicly-traded company. The PGCB is working with them. He said the PGCB will be informed of ownership interests through internal controls.

Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 4-0, with Commissioner Soroko voting by proxy and Commissioner Ufberg recusing.

4. No. 3236 Pennsylvania Liquor Control Board #54-90: Responsible Alcohol Management Program

Ms. Campbell explained that the regulation incorporates statutory changes to the Responsible Alcohol Management Program (RAMP) to distinguish and clarify certification.

Norina Foster, Assistant Counsel, Pennsylvania Liquor Control Board, was present to answer any questions.

Commissioner Watson asked who is required to be RAMP certified. Ms. Foster stated that licensees are certified if they are a restaurant or hotel with a wine-expanded permit, are required by an administrative law judge or are at risk of losing their license.

Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 5-0, with Commissioner Soroko and Commissioner Ufberg voting by proxy.

IV. OTHER BUSINESS

Approval of Vouchers

Vice Chairman Mizner made motions to approve vouchers and expenses for the period May 21, 2021 through June 17, 2021. Commissioner Watson seconded, and the motions passed 5-0.

V. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Bedwick announced the next public meeting is scheduled for Wednesday, September 1, 2021, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Bedwick announced that no executive session would be held.

VII. ADJOURNMENT

Chairman Bedwick adjourned the meeting at 11:55 a.m.