

# **INDEPENDENT REGULATORY REVIEW COMMISSION**

## **2024 Report on Legislative Requests to Review Existing Regulations**



**George D. Bedwick, Esq., Chairman**

**John F. Mizner, Esq., Vice Chairman**

**John J. Soroko, Esq.**

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**September 11, 2024**

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## Introduction/Overview

This report details the Commission's review of existing regulations pursuant to the request of six standing Committees of the Pennsylvania House of Representatives pursuant to Section 8.1 of the Regulatory Review Act.

### Review Requests

Near the close of the 2021-22 legislative session, the following six Pennsylvania House Committees submitted requests to the Commission for the review of existing Commonwealth regulations:

- Aging & Older Adult Services
- Children and Youth
- Health
- Judiciary
- Labor & Industry
- State Government

Section 8.1 of the Regulatory Review Act provides the following with respect to the review of existing regulations:

The commission, on its motion or at the request of any person or member of the General Assembly, may review any existing regulation which has been in effect for at least three years. **If a committee of the Senate or the House of Representatives requests a review of an existing regulation, the commission shall perform the review and shall assign it high priority. The commission may submit recommendations to an agency recommending changes in existing regulations if it finds the existing regulation to be contrary to the public interest under the criteria established in section 5.2.** The commission may also make recommendations to the General Assembly and the Governor for statutory changes if the commission finds that any existing regulation may be contrary to the public interest.

71 P.S. § 745.8a. [Emphasis added.]

### Scope of Review

Obsolete regulations serve no benefit to the public. Pennsylvania's regulations should provide clear and accurate guidance to the citizens and businesses of the Commonwealth. Since the 1990s, Commonwealth agencies have had an ongoing obligation to take steps to eliminate outdated

regulations.<sup>1</sup> Agencies have been proactively amending and repealing their obsolete rules, with recent examples including regulations #3408 (deleting expired grant program provisions) and #3380 (updating archaic intellectual disability terms). We applaud the efforts of agencies in taking these steps and have found rulemakings which include updates like these to be in the public interest.

In their requests, Committees requested that we review existing regulations to identify those that are unnecessary and out-of-date. They asked that provisions be modernized. We fully embrace the Committees' desire to bring all Commonwealth regulations up to date. Our standard of review, however, is governed by Section 8.1 of the Regulatory Review Act.<sup>2</sup>

In order to provide any recommendations, Section 8.1 provides that the Commission must first determine that a regulation is no longer in the public interest. We identified many instances in which this standard was met. Other rules did not reach that threshold. However, in all cases, we believe that the Committees' concerns and discussions between the agencies and the Commission have renewed the commitment and efforts of each agency to continually review and update existing regulations.

### **Time and Resources Involved**

The legislative requests encompassed 40 prior rulemakings, 103 additional Chapters of regulations, and two subchapters. Regulations of 10 different agencies were the focus of this review.

This extensive project was undertaken alongside the Commission's ongoing obligations.<sup>3</sup> All work was managed with existing resources, supplemented by the temporary employment of one legal intern and the part-time work of a former Commission analyst who returned to service as an annuitant in order to assist with the review project. Our review was further aided by the Legislative Reference Bureau which assisted in researching and providing annotations of Court decisions and statutes relevant to each request.

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<sup>1</sup> Under Executive Order 1996-1, entitled "Regulatory Review and Promulgation" and which remains in effect today, agencies themselves are already assigned the responsibility for reviewing their existing regulations. Specifically, Executive Order 1996-1 instructs agencies that they are to review existing regulations "in accordance with the review schedule published annually by each agency" to "determine whether the regulation continues to effectively fulfill the goals for which it was intended..."

<sup>2</sup> We also note that our review was conducted without the benefit of an important rulemaking element that is often crucial to the Commission's consideration of regulations to determine whether they are in the public interest: a Regulatory Analysis Form. Since the enactment of the Regulatory Review Act in 1982, every rulemaking has been required to include this form to elicit data on things such as the number of parties affected by the regulations, the costs to them and to the Commonwealth, how other states and the federal government are regulating the same conduct, and more. Agencies often spend months compiling the information required to complete this form for a single regulation. The answers contained within the responses are invaluable—and necessary—to fully assess a regulation.

<sup>3</sup> During the pendency of this project, the Commission separately reviewed an additional 71 proposed regulations and considered 89 final regulations as part of its normal responsibilities. Those rulemakings included comprehensive long-term nursing facility safeguards as well as rules establishing the Commonwealth's medical marijuana program and standards for drug and alcohol recovery house licensure.

Researching, compiling, and organizing the materials to perform the review took several months. Following that, the rules covered by each request were analyzed to develop formal inquiries for each agency. These letters were issued on a rolling basis as our review progressed from one agency to the next. As noted above, these requests arrived at the close of a legislative session which also coincided with a transition to a new Governor and administration in each agency. Officials and agency staff of the new administration required additional time to respond to the Committee requests that were issued during the prior administration.

The response of each agency, together with the research and information compiled during our review, informed our analysis of each rulemaking and resulted in the findings and recommendations included in this report.

## **Findings**

Our report identifies several areas where the failure to update regulations reached the threshold of rendering them to be no longer in the public interest. Regulatory provisions expired but were not repealed. Statutes changed the scope and applicability of Commonwealth programs, yet agency regulations still reflect the prior program. Fees were increased by the General Assembly but not changed in the regulations. No single agency or administration is responsible for these issues; necessary updates accumulated over years and even decades. Regulations should be clear and understandable and provide up-to-date guidance for Pennsylvanians. All agencies should be vigilant in ensuring that the regulations they administer are current and in the best interest of the Commonwealth, regulated communities, and the public.

The Commission's recommendations, issued through Orders adopted by the Commission, address the following areas:

### **Department of Aging**

- 6 Pa. Code Chapter 20 (relating to Family Caregiver Support Program); and
- 6 Pa. Code Chapter 21 (relating to Domiciliary Care Services for Adults).

### **Department of Corrections**

- 37 Pa. Code Chapter 91 (relating to Administration);
- 37 Pa. Code Chapter 93 (relating to State Correctional Institutions and Facilities);
- 37 Pa. Code Chapter 94 (relating to Release and Prerelease Programs);
- 37 Pa. Code Chapter 95 (relating to County Correctional Institutions); and
- 37 Pa. Code Chapter 97 (relating to State Intermediate Punishment Drug Offender Treatment Program).

### **Department of Health**

- 28 Pa. Code Chapter 5 (relating to Clinical Laboratories);
- 28 Pa Code Part I, Chapter 30 (relating to Blood Banks);
- 28 Pa Code Part III, Chapter 51 (relating to General Information);
- 28 Pa Code Part III, Subpart A, Chapter 53 (relating to Photo Identification Badges);
- 28 Pa Code Part IV, Subpart B, Chapters 101 to 158 (relating to General and Special Hospitals); and
- 28 Pa Code Part IV, Subpart F, Chapters 551 to 573 (relating to Ambulatory Surgical Facilities).

### **Department of Labor and Industry**

- 34 Pa. Code Chapter 5 (relating to Blasting, Demolition, Fireworks and Explosives);
- 34 Pa. Code Chapter 13, Subchapter B (relating to Propane and Liquefied Petroleum Gas, specifically Lead Corroding and Oxidizing);
- 34 Pa. Code Chapter 23, Subchapter B (relating to Laundering and Dyeing Establishments, specifically Dry Cleaning and Dyeing);
- 34 Pa. Code Chapter 31, Subchapter C (relating to Migrant Labor, specifically Seasonal Farm Labor);
- 34 Pa. Code Chapter 38 (relating to Building Energy Conservation Standards);
- 34 Pa. Code Chapter 47, Subchapter D (relating to Miscellaneous Provisions, specifically Facilities for Handicapped);
- 34 Pa. Code Chapter 60 (relating to Universal Accessibility Standards);
- Regulations issued under the General Safety Law (Act 174 of 1937);
- 34 Pa. Code Chapter 29, Subchapter F (relating to Mechanical Apparatus – Miscellaneous, specifically Abrasive Wheels);
- 34 Pa. Code Chapter 41, Subchapter B (relating to Sanitation, specifically Railroad Sanitation); and
- 34 Pa. Code Chapter 47, Subchapter K (relating to Miscellaneous Provisions, specifically Safety Glazing Material).

## **Department of State**

- 4 Pa. Code – Campaign Finance Reports Filed on Diskettes; and
- 4 Pa. Code – Fees for Notary Services.

Many other rulemakings and code provisions not listed above were reviewed as part of this project. Those regulations, which are detailed in the Comprehensive Analysis of this report, remain in the public interest.

## **Conclusion**

Pennsylvania's General Assembly created the Independent Regulatory Review Commission to provide independent oversight of the rulemaking process in Pennsylvania. The Commission's mission is to review agency regulations in order to determine whether they are in the public interest. The Commission reviews rules, it does not write them. It is for the agencies themselves, working together with the legislature, stakeholders, and guided by citizen input, to develop rules best suited to the needs of the Commonwealth.

By evaluating the conformity of new and existing rulemakings with law, and their impact on the public and regulated community, we assist the General Assembly and the Governor in achieving a favorable regulatory balance and ensure the integrity of Pennsylvania's regulatory process. We thank the Committees and members of the General Assembly for their role in this area, and extend our thanks to each of the state agencies involved in this project for working with us to ensure that our state's regulations are in the public interest.

Looking ahead, the Commission will continue its role as an independent oversight body reviewing agency regulations and determining whether the criteria set forth in Pennsylvania's Regulatory Review Act have been satisfied.

# **Recommendations**

### **Department of Aging**

- 6 Pa. Code Chapter 20 (relating to Family Caregiver Support Program); and
- 6 Pa. Code Chapter 21 (relating to Domiciliary Care Services for Adults).

### **Department of Corrections**

- 37 Pa. Code Chapter 91 (relating to Administration);
- 37 Pa. Code Chapter 93 (relating to State Correctional Institutions and Facilities);
- 37 Pa. Code Chapter 94 (relating to Release and Prerelease Programs);
- 37 Pa. Code Chapter 95 (relating to County Correctional Institutions); and
- 37 Pa. Code Chapter 97 (relating to State Intermediate Punishment Drug Offender Treatment Program).

### **Department of Health**

- 28 Pa. Code Chapter 5 (relating to Clinical Laboratories);
- 28 Pa Code Part I, Chapter 30 (relating to Blood Banks);
- 28 Pa Code Part III, Chapter 51 (relating to General Information);
- 28 Pa Code Part III, Subpart A, Chapter 53 (relating to Photo Identification Badges);
- 28 Pa Code Part IV, Subpart B, Chapters 101 to 158 (relating to General and Special Hospitals); and
- 28 Pa Code Part IV, Subpart F, Chapters 551 to 573 (relating to Ambulatory Surgical Facilities).

### **Department of Labor and Industry**

- 34 Pa. Code Chapter 5 (relating to Blasting, Demolition, Fireworks and Explosives);
- 34 Pa. Code Chapter 13, Subchapter B (relating to Propane and Liquefied Petroleum Gas, specifically Lead Corroding and Oxidizing);
- 34 Pa. Code Chapter 23, Subchapter B (relating to Laundering and Dyeing Establishments, specifically Dry Cleaning and Dyeing);
- 34 Pa. Code Chapter 31, Subchapter C (relating to Migrant Labor, specifically Seasonal Farm Labor);

## Recommendations

- 34 Pa. Code Chapter 38 (relating to Building Energy Conservation Standards);
- 34 Pa. Code Chapter 47, Subchapter D (relating to Miscellaneous Provisions, specifically Facilities for Handicapped);
- 34 Pa. Code Chapter 60 (relating to Universal Accessibility Standards);
- Regulations issued under the General Safety Law (Act 174 of 1937);
- 34 Pa. Code Chapter 29, Subchapter F (relating to Mechanical Apparatus – Miscellaneous, specifically Abrasive Wheels);
- 34 Pa. Code Chapter 41, Subchapter B (relating to Sanitation, specifically Railroad Sanitation); and
- 34 Pa. Code Chapter 47, Subchapter K (relating to Miscellaneous Provisions, specifically Safety Glazing Material).

### **Department of State**

- 4 Pa. Code – Campaign Finance Reports Filed on Diskettes; and
- 4 Pa. Code – Fees for Notary Services.

## INDEPENDENT REGULATORY REVIEW COMMISSION

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Commissioners Voting:

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John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

6 Pa. Code Chapter 20

Department of Aging

Family Caregiver Support Program

The House Aging and Older Adult Services Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations in 6 Pa. Code, including:

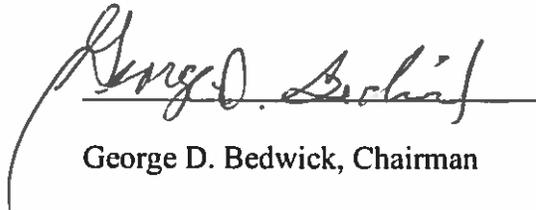
- **Chapter 20 Family Caregiver Support Program; and**
- Chapter 21 Domiciliary Care Services for Adults.

This order addresses Chapter 20 which sets forth the rules governing the administration and operation of the Family Caregiver Support Program. The content of Chapter 20 includes general provisions, program administration, caregiver participation, core program services, and reimbursed services. The underlying statutory authority for Chapter 20 was updated by Act 20 of 2021 (Pennsylvania Caregiver Support Act) (Act 20), which was enacted on June 11, 2021.

The Department of Aging (Department) reviewed Chapter 20 and acknowledged that Act 20 updated the Chapter 20 requirements. The Department recommended the following sections be revised, modified or eliminated to align with Act 20:

- Section 20.2 Definitions;
- Section 20.12 Administrative Functions;
- Section 20.21 Eligibility;
- Section 20.22 Conditions of Participation;
- Section 20.23 Assessment and Care Management;
- Section 20.34 Caregiver Education and Training;
- Section 20.41 General Reimbursement;
- Section 20.43 Home Modifications; and
- Section 20.62 Waivers.

Although we appreciate the Department's willingness to modify the existing regulations, it has not provided a timeframe within which it intends to update the Chapter 20 regulations. Consequently, we find the above-listed sections of Chapter 20 are no longer in the public interest under the RRA criteria of statutory authority, legislative intent, comments by the Committee, economic impact and clarity. *See* 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 20 regulations to align with current state law and Department practices.



George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

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6 Pa. Code Chapter 21

Department of Aging

Domiciliary Care Services for Adults

The House Aging and Older Adult Services Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations in 6 Pa. Code, including:

- Chapter 20 Family Caregiver Support Program; and
- **Chapter 21 Domiciliary Care Services for Adults.**

This order addresses Chapter 21 which establishes standards for domiciliary care services. The content of Chapter 21 includes: eligibility determination, certification and application processes; Department of Aging responsibilities; Area Agency on Aging responsibilities; provider rights and responsibilities; client rights and responsibilities; fair hearing and appeals; and other administrative provisions.

The Commission's review determined that since Chapter 21 became effective in 1990, there have been legislative amendments at both the state and federal levels that are not reflected in the existing Chapter 21 regulations. The amendments at the state level include Act 169 of 1996 (Older Adults Protective Services Act - Omnibus Amendments) and Act 13 of 1997 (Older Adults Protective Services - Amend). The federal amendments include the Older Americans Act of 1965 which was reauthorized in 1992, expired in 1996, and again reauthorized with amendments in 2000, 2006, 2016, and 2020.

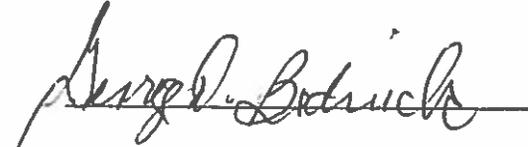
The Department of Aging (Department) has reviewed the existing Chapter 21 regulations and determined that the following sections may need to be revised, modified or eliminated:

- Section 21.2 Definitions;
- Section 21.23 Application process for domiciliary care services and the domiciliary care supplement;

- Section 21.24 Redetermination of eligibility;
- Section 21.28 Provider application and home certification;
- Section 21.55 AAA placement activities;
- Section 21.61 Domiciliary care service's relationship to service management;
- Section 21.79 Fire and safety activities; and
- Section 21.82 Other provider responsibilities.

While we appreciate the Department's willingness to update the existing regulations, it has not provided a timeframe within which it intends to update the Chapter 21 regulations. Consequently, we find the above-listed sections of Chapter 21 are no longer in the public interest under the RRA criteria of statutory authority, legislative intent, comments by the Committee, economic impact, and clarity. *See* 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 21 regulations to align with current state and federal law and Department practices.



  
George D. Bedwick, Chairman

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6 Pa. Code Chapter 22

Department of Aging

Pharmaceutical Assistance Contract for the

Elderly (PACE)

The House Aging and Older Adult Services Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations in 6 Pa. Code, including:

- Chapter 20 Family Caregiver Support Program;
- Chapter 21 Domiciliary Services for Adults; and
- **Chapter 22 Pharmaceutical Assistance Contract for the Elderly (PACE).**

This order addresses Chapter 22 which sets forth regulations governing the administration, provision, and receipt of prescription drug benefits available to older Pennsylvanians under the PACE Program.

The Department of Aging (Department) has reviewed Chapter 22 and determined that the PACE regulations remain relevant and continue to serve the administrative needs, including applicant and provider enrollment, claims adjudication, and appeals. The Department further notes that the underlying statutory authority for the regulations continues, and the regulations maintain consistency with the enabling legislation.

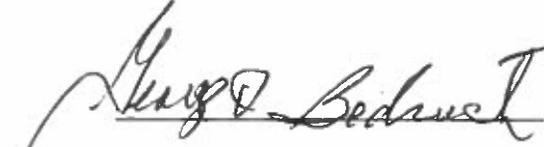
The Commission's review identified one issue regarding the definition of "Act" in Section 22.2. The definition cites a statute that was immediately repealed after the rulemaking became effective. The outdated definition in Section 22.2 states:

Act—The Pharmaceutical Assistance Contract for the Elderly Act  
(62 P. S. § § 2901—2908).

We find that the above-listed provision of Chapter 22 is no longer in the public interest under the RRA criteria of comments by the Committee and clarity. See 71 P.S. § 745.5b. This issue requires

legislative action to correct. We, therefore, recommend that the General Assembly add a short title to the PACE Program statute to provide the Department with a consistent citation to its authority that does not change with future statutory amendments.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

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John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

37 Pa. Code Chapter 91  
Department of Corrections  
Administration

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- **Chapter 91 Administration;**
- Chapter 93 State Correctional Institutions and Facilities;
- Chapter 94 Release and Prerelease Programs;
- Chapter 95 County Correctional Institutions; and
- Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.

This order addresses Chapter 91 which applies to an institution, motivational boot camp, or community corrections center operated or contracted by the Department. The content of Chapter 91 includes reception and discharge of inmates, catchment areas, and use of force and restraints.

Chapter 91 regulations identified by the Committee for the Commission's review include:

- No. 19-5 (#2196) Administration and State Correctional Institutions and Facilities; and
- No. 19-6 (#2403) Administration, State Correctional Facilities and Release and Prerelease Programs).

The Department has acknowledged the need to amend these regulations to address statutory changes resulting from Act 33 of 2009 (Act 33) and Act 59 of 2021 (Act 59), as well as litigation and policy changes that have occurred since the regulations were initially promulgated and is working towards making the necessary updates. However, given that the regulations listed above were finalized between the years of 2001 and 2005, we find that the delay in updating those

regulations in Chapter 91 renders them no longer in the public interest under the RRA criteria of statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. *See* 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 91 regulations to align with Act 33 and Act 59 as well as Department practices resulting from litigation and policy changes.



  
George D. Bedwick, Chairman

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Dennis A. Watson, Esq.

37 Pa. Code Chapter 93

Department of Corrections

State Correctional Institutions and Facilities

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- Chapter 91 Administration;
- **Chapter 93 State Correctional Institutions and Facilities;**
- Chapter 94 Release and Prerelease Programs;
- Chapter 95 County Correctional Institutions; and
- Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.

This order addresses Chapter 93 which applies to Department institutions and facilities. The content of Chapter 93 includes inmate rights and privileges and motivational boot camps.

Chapter 93 regulations identified by the Committee for the Commission's review include:

- No. 19-3 (#2010) Motivational Boot Camps;
- No. 19-5 (#2196) Administration and State Correctional Institutions and Facilities; and
- No. 19-6 (#2403) Administration, State Correctional Facilities and Release and Prerelease Programs).

The regulation at 37 Pa. Code Subsection 93.12(e) contains fees that were specified in the regulation more than 15 years ago. This provisions states:

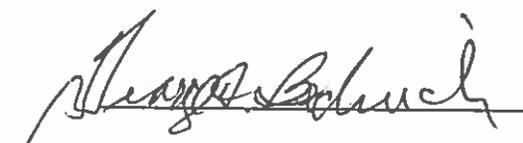
“The fee for any medical service in subsection (c) is \$3. This amount will be increased to \$4 on July 1, 2005, and \$5 on July 1, 2007, except that an inmate is required to pay a fee equivalent to

the total cost of medical services provided to another inmate as a result of the inmate's assaultive conduct.”

Given that the fees in Subsection 93.12(e) have been in place for over 15 years, we find that the above-listed fees contained in Chapter 93 are no longer in the public interest under the criteria of comments by the Committee, reasonableness and economic impact.

The Department has acknowledged the need to amend these regulations to address statutory changes resulting from Act 33 of 2009 (Act 33), Act 115 of 2019 (Act 115), and Act 59 of 2021 (Act 59), as well as litigation and policy changes that have occurred since the regulations were initially promulgated and is working towards making the necessary updates. However, given that the regulations listed above were finalized between the years of 2000 and 2005, and fees for medical services have been in place for over 15 years, we find that the delay in updating those regulations in Chapter 93 renders them no longer in the public interest under the RRA criteria of statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. See 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 93 regulations to align with Act 33, Act 115 and Act 59 as well as Department practices resulting from litigation and policy changes.



  
George D. Bedwick, Chairman

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Dennis A. Watson, Esq.

37 Pa. Code Chapter 94

Department of Corrections

Release and Prerelease Programs

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- Chapter 91 Administration;
- Chapter 93 State Correctional Institutions and Facilities;
- **Chapter 94 Release and Prerelease Programs;**
- Chapter 95 County Correctional Institutions; and
- Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.

This order addresses Chapter 94 which applies to Department release and prerelease programs. The content of Chapter 94 includes prerelease programs and procedures for participating in such programs, application and notification processes, and staff responsibilities.

Chapter 94 regulations identified by the Committee for the Commission's review include:

- No. 19-5 (#2196) Administration and State Correctional Institutions and Facilities; and
- No. 19-6 (#2403) Administration, State Correctional Facilities and Release and Prerelease Programs).

The Department has acknowledged the need to amend these regulations to address statutory changes resulting from Act 33 of 2009 (Act 33) and Act 59 of 2021 (Act 59), as well as litigation and policy changes that have occurred since the regulations were initially promulgated and is working towards making the necessary updates. However, given that the regulations listed above were finalized between the years of 2000 and 2005, we find that the delay in updating those regulations in Chapter 94 renders them no longer in the public interest under the RRA criteria of

statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. *See* 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 94 regulations to align with Act 33 and Act 59 as well as Department practices resulting from litigation and policy changes.



*George D. Bedwick*  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

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37 Pa. Code Chapter 95  
Department of Corrections  
County Correctional Institutions

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- Chapter 91 Administration;
- Chapter 93 State Correctional Institutions and Facilities;
- Chapter 94 Release and Prerelease Programs;
- **Chapter 95 County Correctional Institutions;** and
- Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.

This order addresses Chapter 95 which applies to county correctional institutions. The content of Chapter 95 includes administrative standards, regulations and facilities, and grants to counties for prison construction.

Chapter 95 regulations identified by the Committee for the Commission's review include:

- No. 19-4 (#2011) County Correctional Institutions; and
- No. 19-9 (#2544) Correctional Institutions.

The Department has acknowledged the need to amend these regulations to address core correctional practices that have evolved since the regulations were initially promulgated and is working towards making the necessary updates. However, given that the regulations listed above were finalized between the years of 2000 and 2008, we find that the delay in updating those regulations in Chapter 95 renders them no longer in the public interest under the RRA criteria of

statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. *See* 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 95 regulations to align with correctional practices that have evolved since the regulations were initially published.



A handwritten signature in black ink, appearing to read "George D. Bedwick". The signature is written in a cursive style with a long, sweeping underline.

George D. Bedwick, Chairman

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37 Pa. Code Chapter 97

Department of Corrections

State Intermediate Punishment Drug Offender

Treatment Program

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- Chapter 91 Administration;
- Chapter 93 State Correctional Institutions and Facilities;
- Chapter 94 Release and Prerelease Programs;
- Chapter 95 County Correctional Institutions; and
- **Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.**

This order addresses Chapter 97 which applies to certain defendants convicted of drug-related offenses. The content of Chapter 97 includes commitment for assessment, assessment for addiction and other treatment needs, selection committee personnel and duties, selection criteria, program standards, program advancement and regression, community-based therapeutic community, outpatient addiction treatment facility, supervised reintegration into the community, treatment and disciplinary sanctions, suspension and expulsion from the program, and consent to disclosure of information.

The Chapter 97 regulation identified by the Committee for the Commission's review is:

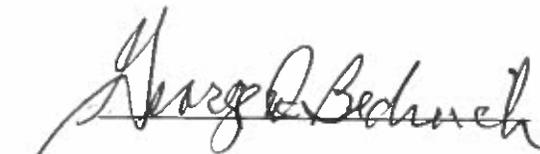
- No. 19-9 (#2590) State Intermediate Punishment.

The regulation at 37 Pa. Code Subsection 97.116(d)(3) contains a fee that was established more than 15 years ago. This provision states:

“A participant who is indigent as defined in Department policy DC-ADM 803, ‘Inmate Mail and Incoming Publications,’ will be afforded copy service and legal postage up to a maximum of \$10 per month and all moneys received in the inmate’s account shall be used to pay for the cost of the copies and legal postage. A nonindigent inmate will incur copying charges in accordance with Department policy 3.1.1, ‘Fiscal Administration.’” Emphasis added.

The Department has acknowledged the need to amend Chapter 97 to address statutory changes resulting from Act 115 of 2019 (Act 115) and programmatic changes that have occurred since the regulation was initially promulgated and is working towards making the necessary updates. However, given that the regulation listed above was finalized in 2008, and the monetary allowance for copy service and legal postage has been in place for over 15 years, we find that the delay in updating the regulation in Chapter 97 renders the regulation no longer in the public interest under the RRA criteria of statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. See 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 97 regulations to align with Act 115 and programmatic changes.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

28 Pa. Code Chapter 5

Department of Health

Clinical Laboratories

The House Health Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. §745.8a) of existing regulations of the Pennsylvania Department of Health (Department) in 28 Pa. Code (relating to Health and Safety). These regulations include:

- **Chapter 5 *Clinical Laboratories*;**
- **Chapter 30 *Blood Banks*;**
- **Chapter 51 *General Information*;**
- **Chapter 53 *Photo Identification Badges*;**
- **Part IV, Subpart B *General and Special Hospitals*, encompassing Chapters 101 to 158; and**
- **Part IV, Subpart F *Ambulatory Surgical Facilities*, encompassing Chapters 551 to 573.**

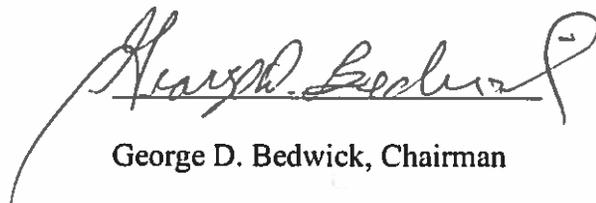
This Order addresses Chapter 5 (*Clinical Laboratories*), which includes requirements for permits, personnel, physical facilities, procedures, records, quality control, ethical practice, and equipment to determine blood alcohol content. Chapter 5 was last amended in 1984.

Based upon this Commission's review of this regulation, the enabling statute and subsequent amendments, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of legislative intent, clarity, consistency with statutes, and comments by the Committee. *See* 71 P.S. § 745.5b. We recommend the Department amend Chapter 5 to address, at a minimum, the following issues:

1. Since Chapter 5 is based on and defines the Clinical Laboratory Improvement Amendments of 1967, it should be updated to reflect the Clinical Laboratory Improvement Amendments of 1988 or any subsequent legislation.

2. Section 5.1 (relating to definitions) defines “Clinical Laboratories Improvement Act of 1967 (CLIA)—Section 353 of the act of July 1, 1944, Pub. L. No. 90-174 (42 U.S.C.A. § 263), and the regulations which apply thereto.” The current standard is the CLIA of 1988 (not 1967). The citation to 42 U.S.C.A. § 263 should be 42 U.S.C.A. § 263a. Additionally, since this definition is used within Chapter 5 at Sections 5.41(c)(3) and 5.83, these provisions commensurately set an outdated standard.
3. The definition of “Clinical Laboratory” in Section 5.1 lacks clarity and is outdated, as written. The list of exceptions in Subparagraph (ii) has not been amended since 1984. It does not include any innovations since this definition was implemented.
4. Section 5.2. (relating to scope and exception), states “[T]his chapter is applicable to all clinical laboratories operating within this Commonwealth....” Whereas, amendments to the statute made by Act 122 of 2013, Section 3 apply “...regardless of whether the person or clinical laboratory is located in this Commonwealth....” Therefore, the scope Section 5.2 sets for Chapter 5 is not consistent with Act 122.
5. Subsection 5.11(b) includes the statutory \$25 permit fee established by Act 389 of 1951 (35 P.S. § 2154). However, Act 389 of 1951 was repealed insofar as it establishes a fee that is inconsistent with the fees set forth in Act 48 of 1981. Regardless, the \$25 fee in Subsection 5.11(b) is outdated.
6. Section 5.71 (relating to restrictions on solicitation) is outdated because it does not reflect the statutory amendments made by Section 3 of Act 122 which expanded upon unlawful conduct.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

28 Pa. Code Chapter 30

Department of Health

Blood Banks

The House Health Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. §745.8a) of existing regulations of the Pennsylvania Department of Health (Department) in 28 Pa. Code (relating to Health and Safety). These regulations include:

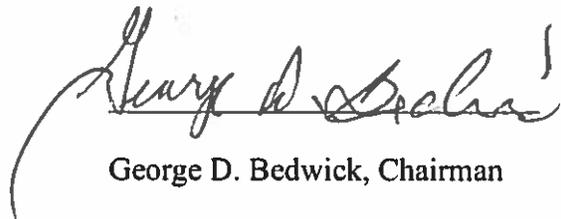
- Chapter 5 *Clinical Laboratories*;
- **Chapter 30 *Blood Banks***;
- Chapter 51 *General Information*;
- Chapter 53 *Photo Identification Badges*;
- Part IV, Subpart B *General and Special Hospitals*, encompassing Chapters 101 to 158; and
- Part IV, Subpart F *Ambulatory Surgical Facilities*, encompassing Chapters 551 to 573.

This Order addresses Chapter 30 which, as written, applies to all blood banks operating in Pennsylvania (except blood banks operated by the Federal government, or to any blood bank operated purely for research and teaching purposes, provided blood or blood products from such research or teaching are not injected into humans). The content of Chapter 30 includes requirements for licensing, fees, inspections, physical facilities, records, and compliance with federal law.

Based upon this Commission's review of this regulation, the enabling statute and subsequent amendments, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of clarity, consistency with statutes, and comments by the Committee. *See* 71 P.S. § 745.5b. We recommend the Department amend Chapter 30 to address, at a minimum, the following issues:

1. Subparagraph 30.30(7)(i) states: "...The possible presence of the agent or viral hepatitis in donors cannot at present be detected with certainty by any available means...." [Emphasis added.] The Hepatitis Screening Act (35 P.S. §§ 630.11 - 630.16), effective September 19, 2016, addresses testing and screening for Hepatitis C. The Hepatitis B Prevention Act (35 P.S. §§ 630.1 – 630.3), effective March 29 of 1996, requires a statewide program for Hepatitis B immunization relating to school aged children. The Centers for Disease Control and Infection website currently includes discussion of tests for Hepatitis (<https://www.cdc.gov/hepatitis/abc/index.htm>). Subsection 30.30 (7)(i) needs to be updated accordingly.
2. Subparagraph 30.30(7)(ii) refers to the former United States Department of Health, Education, and Welfare. The regulation should be updated to the current name of the agency, which is the United States Department of Health and Human Services.
3. Subsection 30.32(c) refers to The Clinical Laboratory Act of 1951. 35 P.S. § 2151 specifies a short title of "The Clinical Laboratory Act." The amended law is The Clinical Laboratory Act of 1988. The regulation should be updated accordingly.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

28 Pa. Code Chapter 51

Department of Health

General Information

The House Health Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. §745.8a) of existing regulations of the Pennsylvania Department of Health (Department) in 28 Pa. Code (relating to Health and Safety). These regulations include:

- Chapter 5 *Clinical Laboratories*;
- Chapter 30 *Blood Banks*;
- **Chapter 51 *General Information***;
- Chapter 53 *Photo Identification Badges*;
- Part IV, Subpart B *General and Special Hospitals*, encompassing Chapters 101 to 158; and
- Part IV, Subpart F *Ambulatory Surgical Facilities*, encompassing Chapters 551 to 573.

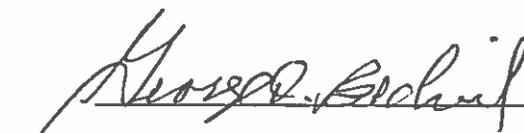
This Order addresses Chapter 51 which contains standards which are applicable to all entities licensed as health care facilities under the Health Care Facilities Act (HCFA). It also identifies specific health care services which are restricted to specified health care facilities.

In response to the Commission's request for information, the Department explained that pursuant to Act 95 of 1998, hospices are operating under the HCFA and under Federal law and regulations. The Department further explained that while Act 13 of 2002 abrogated 28 Pa. Code § 51.3(f) and (g) for a "medical facility," Subsections (f) and (g) are still applicable to home healthcare agencies, hospices, and long-term care nursing facilities due to the broader definition in Section 802a of the HCFA. Thus, the reporting requirements in Subsections (f) and (g) are still applicable to home health care agencies, home care agencies, hospices, and long-term care nursing facilities. Finally, the Department acknowledged that Act 87 of 2022 abrogated 28 Pa. Code §§ 51.22 and 551.21 in part, to allow cardiac catheterization to be performed in outpatient settings as opposed to only in an acute care hospital.

Based upon this Commission's review of this regulation, the enabling statute and subsequent amendments, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of legislative intent, clarity, consistency with statutes, and comments by the Committee. *See* 71 P.S. § 745.5b. We recommend the Department amend Chapter 51 to address, at a minimum, the following issues:

1. Act 95 of 1998 amended the HCFA to include hospice services. Act 95 provided that hospice and hospice services established therein, including application fees and licensure requirements, should be directly in regulation. Accordingly, the regulation should be amended to include these services.
2. Act 13 of 2002 abrogated Subsections 51.3(f) and (g) (relating to notification) "with respect to a medical facility upon the reporting of a serious event, incident or infrastructure failure pursuant to section 313." The regulation should specify the facilities Subsections (f) and (g) continue to apply to.
3. Act 87 of 2022 abrogated Section 51.22. (relating to cardiac catheterization) and Section 551.21 (relating to criteria for ambulatory surgery) insofar as they are inconsistent with Section 822 of the HCFA. The regulation should be amended to reflect the Department's specific interpretation of Act 87.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

28 Pa. Code Chapter 53

Department of Health

Photo Identification Badges

The House Health Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Health (Department) in 28 Pa. Code (relating to Health and Safety). These regulations include:

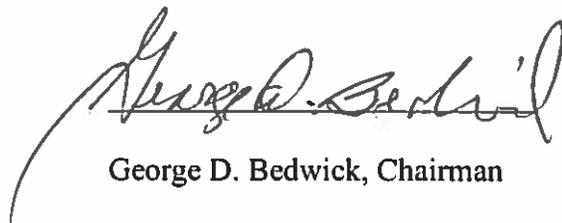
- Chapter 5 *Clinical Laboratories*;
- Chapter 30 *Blood Banks*;
- Chapter 51 *General Information*;
- **Chapter 53 *Photo Identification Badges***;
- Part IV, Subpart B *General and Special Hospitals*, encompassing Chapters 101 to 158; and
- Part IV, Subpart F *Ambulatory Surgical Facilities*, encompassing Chapters 551 to 573.

This Order addresses Chapter 53 which contains photo identification badge standards that apply to all entities licensed as health care facilities and the private practice of a physician. Chapter 53 was adopted as an interim regulation pursuant to Section 809.2(b) of Act 110 of 2010 (Act 110), which amended the Health Care Facilities Act (HCFA). 35 P.S. § 448.80-9b. The interim regulation was effective December 10, 2011, and expired 18 months following the effective date.

The Department explains that the requirements for photo identification badges are set forth by statute in Section 809.2 of the HCFA. However, it acknowledges that interim Chapter 53 has expired. The Department also explains that Act 79 of 2022 (Act 79), effective July 11, 2022, provides the Department with two years to implement the statutory amendments to Section 809.2(a)(1) and (e). To date, the Department has not met the timeframe specified by Act 79.

Based upon this Commission's review of this regulation, the enabling statute, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in

the public interest under the RRA criteria of statutory authority, legislative intent, need, reasonableness, and comments by the Committee. *See* 71 P.S. § 745.5. To avoid any possibility of confusion, we recommend the Department amend or repeal Chapter 53 to comply with Act 110 and Act 79.



George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

28 Pa. Code Part IV, Subpart B, Chapters

101 to 158

Department of Health

General and Special Hospitals

The House Health Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Health (Department) in 28 Pa. Code (relating to Health and Safety). These regulations include:

- Chapter 5 *Clinical Laboratories*;
- Chapter 30 *Blood Banks*;
- Chapter 51 *General Information*;
- Chapter 53 *Photo Identification Badges*;
- **Part IV, Subpart B *General and Special Hospitals*, encompassing Chapters 101 to 158;**  
and
- Part IV, Subpart F *Ambulatory Surgical Facilities*, encompassing Chapters 551 to 573.

This Order addresses Chapters 101 to 158 of Part IV, Subpart B “which applies to all general and special hospitals within this Commonwealth except those hospitals operated by the United States. Chapters 101 through 158 include 32 chapters that address a broad range of topics, including governance and management, admission and discharge, medical staff, as well as nursing services, pharmacy services, emergency services, surgical services, neonatal services, and many other services. The majority of the chapters, 26 of them, were last amended in the 1980s, three were amended in the 1990s, and a single chapter was amended in 2008.

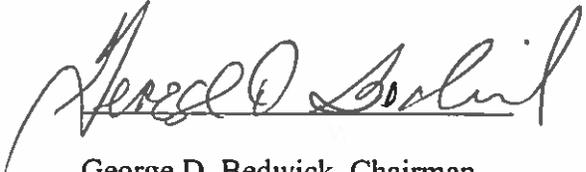
Based upon this Commission’s review of this regulation, the enabling statute, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of statutory authority, legislative intent, economic impact, need, reasonableness, clarity, and comments by the Committee. *See* 71 P.S. § 745.5. We

recommend the Department amend the regulation to address, at a minimum, the following outdated provisions:

1. Section 101.4 (relating to Definitions) defines the terms “May” and “Must.” These definitions are not needed because Section 6.7 of the *Pennsylvania Code and Bulletin Style Manual* already specifies how they are to be used and their meaning. Further, the regulation’s definition of “must” as synonymous with “shall” is inconsistent with the *Pennsylvania Code and Bulletin Style Manual*.
2. In section 101.4 (relating to Definitions), the term “Sexual assault” is defined by reference to 18 Pa.C.S. Chapter 31, Subchapter B (relating to definition of offenses) and includes two exceptions. The definition should be updated to exclude additional offenses from the definition of “sexual assault” for purposes of the regulation. For example, §3131 (relating to unlawful dissemination of intimate image) and §3133 (relating to sexual extortion) should also be considered for exclusion.
3. Section 101.63 refers to both the current Department of Environmental Protection and “DER.” This provision should be updated.
4. Section 101.151 refers to the Department of Public Welfare. This provision should be updated to the Department of Human Services.
5. Under Section 101.181, all of the fees but one fee referred to in 35 P. S. § 448.807 were established by Act 179 of 1992. The “Home care agency or home care registry” fee was established by Act 69 of 2006. The Department should approach the legislature for changes to these statutory fees to better reflect inflation and the Department’s costs.
6. Subparagraph 107.12(14)(iii) refers to “the Medical Practice Act of 1974 (63 P. S. §§ 421.1—421.18) (Repealed).” This provision needs to be updated.
7. The statement of policy in Section 107.12a Specified professional personnel regarding the status of Certified Registered Nurse Practitioners, Physician Assistants, and Certified Nurse Midwife should be updated and directly integrated into the regulation.
8. Section 109.7 refers to the State Board of Nurse Examiners. This is currently the State Board of Nursing.
9. Section 115.15 cross references 7 Pa. Code by stating “...regulations of the Department of Environmental Resources, set forth in 7 Pa. Code § § 78.21—78.24, 78.31 and 78.32 (Reserved).....” However, 7 Pa. Code Chapter 78 has been deleted.
10. Section 111.25 references 7 Pa. Code § § 78.41—78.43 (Reserved), which has been deleted.

11. Section 111.26 references 7 Pa. Code § § 78.61—78.65 (Reserved), which has been deleted.
12. Section 113.30 requires that if the administration suspects mishandling of drugs, it shall contact the Bureau of Drugs of the Office of Attorney General. This should be updated, presumably to the Attorney General “Bureau of Narcotics Investigation and Drug Control.”
13. Section 115.24, relating to microfilm medical records, should be updated to recognize and address newer technologies.
14. Section 125.14 states the remains of a deceased patient shall not be removed...until a physician...has pronounced death....” This provision should be updated to recognize other professions that can pronounce a death, including Certified Registered Nurse Practitioners and Professional Nurses. (Act 68 of 2012 and 35 P.S. § 450.507.)
15. In Paragraph 137.21(b)(8), the reference to 35 P.S. § 621 should be rewritten to include that the referenced law was enacted in 1965 and has since been amended in 1992 (P.L. 398, No. 86).
16. In Subsection 137.24(e), the reference to 35 P.S. §§ 351-353 should be rewritten to reflect that this law was updated in 1943 by P.L. 650, No. 286.
17. The cross reference in Section 147.1 to “Department of Environmental Protection in 25 Pa. Code Chapter 173 (Reserved)” should be updated.
18. Subsection 155.8(e) refers to the “Mental Health Procedures Act of 1976 (50 P.S. §§ 7101—7503).” Since the entire Act is referenced, it is not clear what “Bill of Rights” must be used to comply with Subsection 155.8(e).



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

28 Pa. Code Part IV, Subpart F, Chapters

551 to 573

Department of Health

Ambulatory Surgical Facilities

The House Health Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Health (Department) in 28 Pa. Code (relating to Health and Safety). These regulations include:

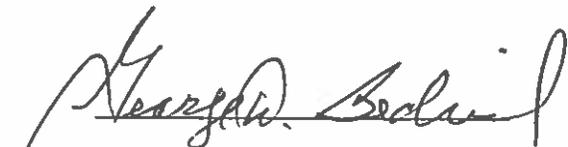
- Chapter 5 *Clinical Laboratories*;
- Chapter 30 *Blood Banks*;
- Chapter 51 *General Information*;
- Chapter 53 *Photo Identification Badges*;
- Part IV, Subpart B *General and Special Hospitals*, encompassing Chapters 101 to 158; and
- **Part IV, Subpart F *Ambulatory Surgical Facilities*, encompassing Chapters 551 to 573.**

This Order addresses Chapters 551 to 573 of Part IV, Subpart F which applies to outpatient surgical hospitals. It includes 11 chapters covering topics that include ownership, medical staff, quality assurance, nursing services, and medical records. Subpart F was established in 1987. The 11 chapters were last amended in 1999.

Based upon this Commission's review of this regulation, the enabling statute, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of statutory authority, legislative intent, economic impact, need, reasonableness, clarity, and comments by the Committee. *See* 71 P.S. § 745.5. We recommend the Department amend the regulation to address, at a minimum, the following outdated provisions:

1. The definition of “Act” in Section 551.3 is outdated. The current HCFA is 35 P.S. § § 448.101 to 448.904b.
2. The definition of “Dentist” in Section 551.3 is outdated. At 49 Pa. Code § 33.1, the State Board of Dentistry defines “Act” as “The Dental Law (63 P. S. § § 120—130i)...”
3. The definition of Nurse practitioner in Section 551.3 is inconsistent with The Professional Nurse Law (63 P.S. § 212) and the State Board of Nursing (49 Pa. Code § 21.251), which both define the term “Certified registered nurse practitioner.”
4. Section 551.21 in the Pa. Code includes a note that “Under section 2 of the act of July 11, 2022 (P.L. 1575, No. 87), the provisions of § 551.21 are abrogated insofar as they are inconsistent with section 822 of the HCFA (35 P.S. § 448.822).” Consequently, both Sections 551.21 and 551.22 should be updated to reflect the Department’s specific interpretation of Act 87.
5. In Paragraph 553.12(b)(9), the citation to the Health Care Services Malpractice Act (40 P. S. § 1301.103) needs to be updated. The provision cited was repealed by Act 13 of 2002.
6. In Section 561.15, the cross reference to 49 Pa. Code § 27.16(b)(4) needs to be corrected to 27.16(b)(3).
7. Section 561.26 requires, upon suspicion of mishandling drugs, that the administration contact the Bureau of Drugs of the Office of Attorney General. This should be updated, presumably to the Attorney General “Bureau of Narcotics Investigation and Drug Control.”
8. Section 563.7, relating to microfilm medical records, should be updated to recognize and address newer technologies.
9. Subsections 567.33(c) and 567.51(a) should be updated to refer to the Department of Environmental Protection.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

34 Pa. Code Chapter 5

Department of Labor and Industry

Blasting, Demolition, Fireworks

and Explosives

The House Labor and Industry (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Labor and Industry (Department) in 34 Pa. Code (relating to Labor and Industry). These regulations include:

- **Chapter 5 Blasting, Demolition, Fireworks and Explosives;**
- Chapter 7 Elevators, Lifts, Escalators, Dumbwaiters, Hoists and Tramways;
- Chapter 13 Propane and Liquefied Petroleum Gas, Subchapter B Lead Corroding and Oxidizing;
- Chapter 23 Laundering and Dyeing Establishments, Subchapter B Dry Cleaning and Dyeing;
- Chapter 31 Migrant Labor, Subchapter C Seasonal Farm Labor;
- Chapter 38 Building Energy Conservation Standards;
- Chapter 47 Miscellaneous Provisions, Subchapter D Facilities for Handicapped;
- Chapter 60 Universal Accessibility Standards; and
- Regulations issued under the General Safety Law (Act 174 of 1937), citing a list of 25 chapters and subchapters under 34 Pa. Code Part I (Chapters 1 to 60).

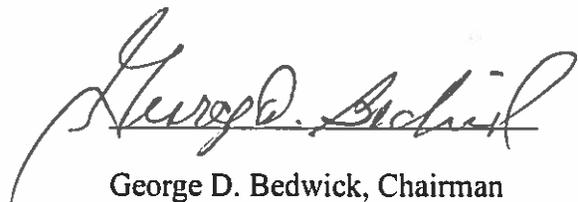
This Order addresses Chapter 5 which applies to blasting, demolition, fireworks, and explosives. Chapter 5 was last amended in 1969.

The Department is not currently enforcing Chapter 5 due to authority for Subchapter A being transferred to the Department of Environmental Resources (now the Department of Environmental

Protection or DEP) under 71 P.S. § 751-35 in 1981. The statutory authority cited in the *Pennsylvania Code* for Subchapters B, C, and D is Act 174 of 1937. Act 174 was partially repealed by Act 147 of 1971, and subsequently affected by Reorganization Plan No. 2 of 1975. Any requirements in Chapter 5 that are not consistent with DEP's regulations, the Uniform Construction Code (UCC), and federal regulations can only serve to cause confusion and impose unnecessary costs.

Based upon this Commission's review of this regulation, the enabling statute, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of statutory authority, legislative intent, economic impact, protection of the public safety, duplication of existing regulations, need, reasonableness, and comments by the Committee. *See* 71 P.S. § 745.5. We recommend the Department repeal Chapter 5 to the extent it is not consistent with the enabling statute, DEP regulations, the UCC, and applicable federal regulations.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

34 Pa. Code Chapter 7

Department of Labor and Industry

Elevators, Lifts, Escalators, Dumbwaiters,

Hoists and Tramways

The House Labor and Industry (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Labor and Industry (Department) in 34 Pa. Code (relating to Labor and Industry). These regulations include:

- Chapter 5 Blasting, Demolition, Fireworks and Explosives;
- **Chapter 7 Elevators, Lifts, Escalators, Dumbwaiters, Hoists and Tramways;**
- Chapter 13 Propane and Liquefied Petroleum Gas, Subchapter B Lead Corroding and Oxidizing;
- Chapter 23 Laundering and Dyeing Establishments, Subchapter B Dry Cleaning and Dyeing;
- Chapter 31 Migrant Labor, Subchapter C Seasonal Farm Labor;
- Chapter 38 Building Energy Conservation Standards;
- Chapter 47 Miscellaneous Provisions, Subchapter D Facilities for Handicapped;
- Chapter 60 Universal Accessibility Standards; and
- Regulations issued under the General Safety Law (Act 174 of 1937), citing a list of 25 chapters and subchapters under 34 Pa. Code Part I (Chapters 1 to 60).

This Order addresses Chapter 7 which applies to elevators, lifts, escalators, dumbwaiters, hoists, and tramways. Chapter 7 was last amended in 1980.

According to the Department, Chapter 7 remains in effect for equipment installed prior to 2004 and functions as a complement to Chapter 405 under the Uniform Construction Code (UCC). Section 7.2 (*Scope*) provides:

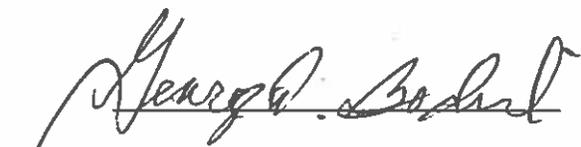
This chapter sets forth rules to safeguard the lives, limbs, maintenance and health of workers involved in the installation, operation and maintenance of elevators, lifts, escalators, dumbwaiters, hoists and tramways in this Commonwealth, and places the responsibility of compliance with the rules upon both employer and employe.

34 Pa. Code § 7.2.

As written, Section 7.2 is no longer clear regarding what it applies to and is inconsistent with the Department's response to our review.

Based upon this Commission's review of this regulation, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of economic impact, clarity, and comments by the Committee. *See* 71 P.S. § 745.5. We recommend the Department amend Chapter 7 to clarify that it only applies to equipment installed prior to the effective dates specified in Chapter 450 of the UCC.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

34 Pa. Code Chapter 13, Subchapter B

Department of Labor and Industry

Propane and Liquefied Petroleum Gas; Lead

Corroding and Oxidizing

The House Labor and Industry (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Labor and Industry (Department) in 34 Pa. Code (relating to Labor and Industry). These regulations include:

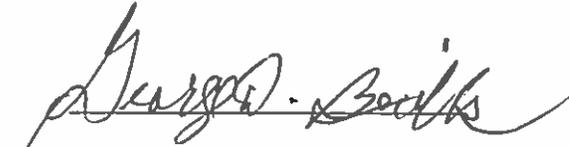
- Chapter 5 Blasting, Demolition, Fireworks and Explosives;
- Chapter 7 Elevators, Lifts, Escalators, Dumbwaiters, Hoists and Tramways;
- **Chapter 13 Propane and Liquefied Petroleum Gas, Subchapter B Lead Corroding and Oxidizing;**
- Chapter 23 Laundering and Dyeing Establishments, Subchapter B Dry Cleaning and Dyeing;
- Chapter 31 Migrant Labor, Subchapter C Seasonal Farm Labor;
- Chapter 38 Building Energy Conservation Standards;
- Chapter 47 Miscellaneous Provisions, Subchapter D Facilities for Handicapped;
- Chapter 60 Universal Accessibility Standards; and
- Regulations issued under the General Safety Law (Act 174 of 1937), citing a list of 25 chapters and subchapters under 34 Pa. Code Part I (Chapters 1 to 60).

This Order addresses Chapter 13 (*Propane and Liquefied Petroleum Gas*) and Subchapter B (*Lead Corroding and Oxidizing*). These regulations were last amended in 1977.

The Department explains, "Although these regulations no longer apply to private sector workplaces pursuant to the federal Occupational Safety and Health Act (OSHA), they retain ongoing applicability in the event of issues arising in public sector workplaces." This explanation represents a change in the applicability of Chapter 13, Subchapter B that is not in regulation.

Based upon this Commission's review of this regulation, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of economic impact, clarity, and comments by the Committee. *See* 71 P.S. § 745.5. We recommend the Department amend Sections 13.2 (*Scope*) and 13.131 (*Purpose*) to reflect the Department's response that Chapter 13, Subchapter B only applies to workplaces not regulated by OSHA.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

34 Pa. Code Chapter 23, Subchapter B

Department of Labor and Industry

Laundering and Dyeing Establishment; Lead

Corroding and Oxidizing

The House Labor and Industry (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Labor and Industry (Department) in 34 Pa. Code (relating to Labor and Industry). These regulations include:

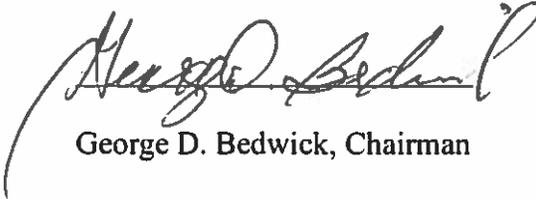
- Chapter 5 Blasting, Demolition, Fireworks and Explosives;
- Chapter 7 Elevators, Lifts, Escalators, Dumbwaiters, Hoists and Tramways;
- Chapter 13 Propane and Liquefied Petroleum Gas, Subchapter B Lead Corroding and Oxidizing;
- **Chapter 23 Laundering and Dyeing Establishments, Subchapter B Dry Cleaning and Dyeing;**
- Chapter 31 Migrant Labor, Subchapter C Seasonal Farm Labor;
- Chapter 38 Building Energy Conservation Standards;
- Chapter 47 Miscellaneous Provisions, Subchapter D Facilities for Handicapped;
- Chapter 60 Universal Accessibility Standards; and
- Regulations issued under the General Safety Law (Act 174 of 1937), citing a list of 25 chapters and subchapters under 34 Pa. Code Part I (Chapters 1 to 60).

This Order addresses Chapter 23 (*Laundering and Dyeing Establishments*), Subchapter B (*Dry Cleaning and Dyeing*). These were last amended in 1968. The authority for Subchapter B, as printed in the *Pennsylvania Code*, states, “The provisions of this Subchapter B issued under the Dry Cleaning and Dyeing Law (35 P.S. §§ 1269.19) (**Repealed**), unless otherwise noted.” [Emphasis added.]

The Department explains, "Although these regulations no longer apply to private sector workplaces pursuant to the federal Occupational Safety and Health Act (OSHA), they retain ongoing applicability in the event of issues arising in public sector workplaces." The Department does not cite any other statutory authority. Furthermore, Section 23.72 (*Scope*) does not reflect the limited applicability of Subchapter B as explained by the Department.

Based upon this Commission's review of this regulation, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of statutory authority, legislative intent, economic impact, clarity, and comments by the Committee. *See* 71 P.S. § 745.5. We recommend the Department amend Section 23.72 to reflect the limited applicability of Chapter 23, Subchapter B.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

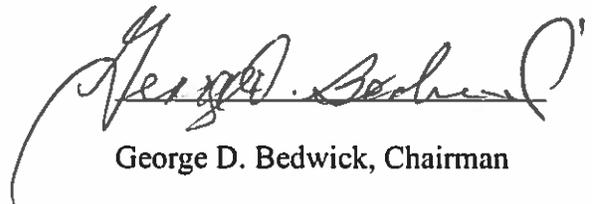
34 Pa. Code Chapter 31, Subchapter C  
Department of Labor and Industry  
Migrant Labor; Seasonal Farm Labor

The House Labor and Industry (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Labor and Industry (Department) in 34 Pa. Code (relating to Labor and Industry). These regulations include:

- Chapter 5 Blasting, Demolition, Fireworks and Explosives;
- Chapter 7 Elevators, Lifts, Escalators, Dumbwaiters, Hoists and Tramways;
- Chapter 13 Propane and Liquefied Petroleum Gas, Subchapter B Lead Corroding and Oxidizing;
- Chapter 23 Laundering and Dyeing Establishments, Subchapter B Dry Cleaning and Dyeing;
- **Chapter 31 Migrant Labor, Subchapter C Seasonal Farm Labor;**
- Chapter 38 Building Energy Conservation Standards;
- Chapter 47 Miscellaneous Provisions, Subchapter D Facilities for Handicapped;
- Chapter 60 Universal Accessibility Standards; and
- Regulations issued under the General Safety Law (Act 174 of 1937), citing a list of 25 chapters and subchapters under 34 Pa. Code Part I (Chapters 1 to 60).

This Order addresses Chapter 31 (Migrant Labor), Subchapter C (Seasonal Farm Labor). These regulations were last amended in 1979. The authority for Subchapter C, as printed in the *Pennsylvania Code*, states, "The provisions of this Subchapter C issued under act of May 2, 1929 (P. L. 1518, No. 452) (35 P. S. §§ 341—1356), unless otherwise noted."

The Committee expressed concern that the *Pennsylvania Code* incorrectly cites Act 452 of 1929. The Department explained that its jurisdiction and authority is under the Seasonal Farm Labor Act. Based upon this Commission's review of this regulation, information provided by the Department, and concerns raised by the Committee, we find the regulation is still in the public interest under the RRA. See 71 P.S. § 745.5. Our recommendation is for the Department to correct the citation in the *Pennsylvania Code* through the Legislative Reference Bureau to avoid confusion.



George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:	Public Meeting Held September 11, 2024
	34 Pa. Code Chapter 38; Chapter 47, Subchapter D; and Chapter 60
George D. Bedwick, Chairman	Department of Labor and Industry
John F. Mizner, Esq., Vice Chairman	Building Energy Conservation Standards;
John J. Soroko, Esq.	Miscellaneous Provisions, Facilities for the
Murray Ufberg, Esq.	Handicapped; and Universal Accessibility
Dennis A. Watson, Esq.	Standards

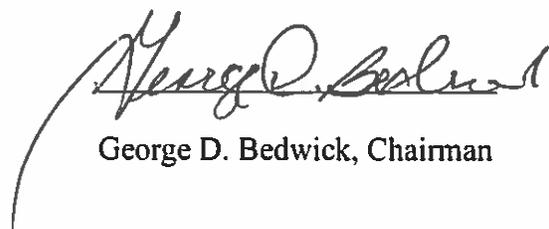
The House Labor and Industry (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Labor and Industry (Department) in 34 Pa. Code (relating to Labor and Industry). These regulations include:

- Chapter 5 Blasting, Demolition, Fireworks and Explosives;
- Chapter 7 Elevators, Lifts, Escalators, Dumbwaiters, Hoists and Tramways;
- Chapter 13 Propane and Liquefied Petroleum Gas, Subchapter B Lead Corroding and Oxidizing;
- Chapter 23 Laundering and Dyeing Establishments, Subchapter B Dry Cleaning and Dyeing;
- Chapter 31 Migrant Labor, Subchapter C Seasonal Farm Labor;
- **Chapter 38 Building Energy Conservation Standards;**
- **Chapter 47 Miscellaneous Provisions, Subchapter D Facilities for Handicapped;**
- **Chapter 60 Universal Accessibility Standards; and**
- Regulations issued under the General Safety Law (Act 174 of 1937), citing a list of 25 chapters and subchapters under 34 Pa. Code Part I (Chapters 1 to 60).

This Order addresses Chapters 38 (*Building Energy Conservation Standards*), Chapter 47 (*Miscellaneous Provisions*), Subchapter D (*Facilities for Handicapped*), and 60 (*Universal Accessibility Standards*). These regulations were last amended in 1982, 1971, and 1994, respectively.

The authority for these regulations has been repealed and superseded by the Uniform Construction Code.

Based upon this Commission's review of this regulation, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of statutory authority, legislative intent, and comments and objections of the Committee. *See* 71 P.S. § 745.5. We recommend the Department repeal Chapters 38, 47, and 60 through the rulemaking process.



George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

34 Pa. Code Part I, Chapters 1-60

Department of Labor and Industry

Regulations Issued Under the General

Safety Law (Act 174 of 1937)

The House Labor and Industry (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Labor and Industry (Department) in 34 Pa. Code (relating to Labor and Industry). These regulations include:

- Chapter 5 Blasting, Demolition, Fireworks and Explosives;
- Chapter 7 Elevators, Lifts, Escalators, Dumbwaiters, Hoists and Tramways;
- Chapter 13 Propane and Liquefied Petroleum Gas, Subchapter B Lead Corroding and Oxidizing;
- Chapter 23 Laundering and Dyeing Establishments, Subchapter B Dry Cleaning and Dyeing;
- Chapter 31 Migrant Labor, Subchapter C Seasonal Farm Labor;
- Chapter 38 Building Energy Conservation Standards;
- Chapter 47 Miscellaneous Provisions, Subchapter D Facilities for Handicapped;
- Chapter 60 Universal Accessibility Standards; and
- **Regulations issued under the General Safety Law (Act 174 of 1937), citing a list of 25 chapters and subchapters under 34 Pa. Code Part I (Chapters 1 to 60).**

This Order addresses regulations promulgated under the General Safety Law (Act 174 of 1937). The committee cited a list of 25 chapters and subchapters under 34 Pa. Code Part I (Chapters 1 to 60) to be considered for repeal or modernization. The most recent amendments for some of these regulations go back as far as 1966; the latest is 1980.

The Department acknowledged that most, if not all, of these regulations should be repealed or amended. Specifically:

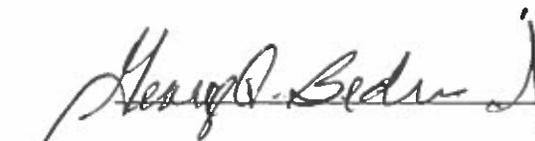
1. Chapter 27 (*Lighting*) because the subject matter is also regulated under the Uniform Construction Code (UCC).

2. Chapter 47 (*Miscellaneous Provisions*) and its Subchapters B (*Cereal Mills, Malhouses and Grain Elevators*), E (*Foundries*), and I (*Textile Industries*) because of the federal Occupational Safety and Health Administration Act (OSHA).
3. The following regulatory provisions retain applicability to public sector workplaces but no longer apply to the private sector pursuant to OSHA:
  - a. Chapter 6 *Construction and Repairs*;
  - b. Chapter 19 *Industries – Food and Drink*;
  - c. Chapter 21 *Ladders*
  - d. Chapter 23 *Laundrying and Dyeing Establishments*;
  - e. Chapter 25 *Lifting and Carrying Apparatus*;
  - f. Chapter 29 *Mechanical Apparatus – Miscellaneous*;
  - g. Chapter 35 *Paints*;
  - h. Chapter 39 *Safety Standards – General*;
  - i. Chapter 41 *Sanitation*;
  - j. Chapter 43 *Tunnel Construction and Compressed Air Work*;
  - k. Chapter 45 *Woodworking and Related Operations*; and
  - l. Chapter 47 *Miscellaneous Provisions*, Subchapters C *Dry Color Industry*, F *Printing and Related Industries*, G *Railings, Toeboards, Open-Sided Floors, Platforms and Runways*, and J *Window Cleaning*).

All of these chapters have at least one section addressing scope, purpose, or applicability that is not consistent with the Department’s response that they now only apply to public sector workplaces.

Based upon this Commission’s review of these regulations, information provided by the Department, and concerns raised by the Committee, we find these regulations are no longer in the public interest under the RRA criteria of legislative intent, economic impact, clarity, need, reasonableness, and comments and objections raised by the Committee. *See* 71 P.S. § 745.5. We recommend the Department repeal these regulations or amend them to update and clarify the proper regulated community to align with state and corresponding federal law to avoid confusion.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

George D. Bedwick, Chairman  
John F. Mizner, Esq., Vice Chairman  
John J. Soroko, Esq.  
Murray Ufberg, Esq.  
Dennis A. Watson, Esq.

Public Meeting Held September 11, 2024  
34 Pa. Code Chapter 29, Subchapter F;  
Chapter 41, Subchapter B; and Chapter 47,  
Subchapter K  
Department of Labor and Industry  
Abrasive Wheels, Railroad Sanitation, and  
Safety Glazing Material

The House Labor and Industry (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Pennsylvania Department of Labor and Industry (Department) in 34 Pa. Code (relating to Labor and Industry). These regulations include:

- **Chapter 29 *Mechanical Apparatus - Miscellaneous, Subchapter F Abrasive Wheels;***
- **Chapter 41 *Sanitation, Subchapter B Railroad Sanitation; and***
- **Chapter 47 *Miscellaneous Provisions, Subchapter K Safety Glazing Material.***

This Order addresses regulations promulgated under Chapter 29, Subchapter F; Chapter 41, Subchapter B; and Chapter 47, Subchapter K. Chapter 41 was last amended in 1968 and Chapter 47 was amended in 1979. The *Pennsylvania Code* does not specify when Subchapter F was last amended but its sole section (§ 29.231 *Reference to national standards*) references standards last amended in 1971.

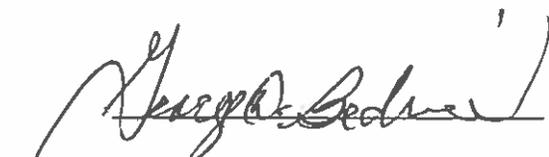
The Department explained that the federal Occupational Safety and Health Act (OSHA) preempted Chapters 29 and 41 for private workplaces and narrowed the scope of the regulations to public sector workplaces. Additionally, the U.S Department of Labor's regulations, most recently amended in 2018, govern the use of abrasive wheels found in Chapter 29 of the Department's regulations.

The Department also acknowledged that the federal Consumer Protection and Safety Act preempts part of Chapter 47, Subchapter K. Accordingly, these regulations can be amended to reflect these changes. Chapter 27 (*Lighting*) because the subject matter is also regulated under the Uniform Construction Code (UCC).

Based upon this Commission's review of these regulations, information provided by the Department, and concerns raised by the Committee, we find these regulations are no longer in the

public interest under the RRA criteria of legislative intent, economic impact, clarity, need, reasonableness, and comments and objections raised by the Committee. *See* 71 P.S. § 745.5. We recommend the Department repeal these regulations or amend them to update and clarify the proper regulated community, to align with state and corresponding federal law, and to avoid unnecessary duplication and confusion.



  
George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

4 Pa. Code

Department of State

Campaign Finance Reports Filed on Diskettes

The House State Government Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of regulations of the Pennsylvania Department of State (Department) in 4 Pa. Code (relating to Administration). The Committee provided three categories of concern: Committee substantive concerns, repealed regulations, and requests for additional information that is not on IRRC's website. The Committee's substantive concerns were raised in the following regulations:

- **IRRC # 2100 (#16-22) *Campaign Finance Reports Filed on Diskettes; and***
- **IRRC #2407 (#16-33) *Fees for Notary Service.***

This Order addresses IRRC #2100, which updated references to the official Campaign Finance Reporting Forms and added a provision for reports to be filed on diskette. This regulation was approved by the Commission in 2000 and can be found in 4 Pa. Code Chapter 177 (*Reports by Candidates, Political Committees and other Persons*). The Committee stated this regulation may be outdated by requiring the filing of campaign fliers on diskettes. The requirement provides:

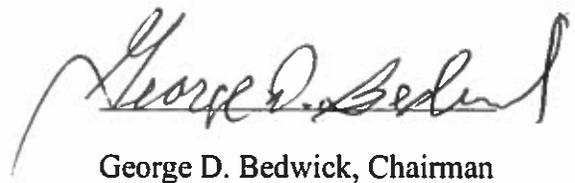
The Department also accepts campaign finance reports on diskette in lieu of a paper report as long as it meets the technical specifications of the Department and is accompanied by a cover page and signed affidavit. This information can be obtained by accessing the Department's website at [www.dos.state.pa.us](http://www.dos.state.pa.us) or contacting the Bureau at (717) 787-5280. Act 73 of 2013, as amended in 2016 Act 73 of 2013, as amended in 2016.

4 Pa. Code § 177.9(d).

The Department agreed this requirement is outdated and stated it will explore future revisions as it continues its review of the campaign finance regulations. This Commission also notes that the requirement is inconsistent with the Department guidance on its website, which allows reports to be filed online.

Based upon this Commission's review of this regulation, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest under the RRA criteria of reasonableness, need, and comments by the Committee. *See* 71 P.S. § 745.5. We recommend the Department revise 4 Pa. Code § 177.9(d) to align with current technologies and practices.



A handwritten signature in black ink, reading "George D. Bedwick". The signature is written in a cursive style with a prominent initial "G".

George D. Bedwick, Chairman

## INDEPENDENT REGULATORY REVIEW COMMISSION

### ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

4 Pa. Code

Department of State

Fees for Notary Services

The House State Government Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of regulations of the Pennsylvania Department of State (Department) in 4 Pa. Code (relating to Administration). The Committee provided three categories of concern: Committee substantive concerns, repealed regulations, and requests for additional information that is not on IRRC's website. The Committee's substantive concerns were raised in the following regulations:

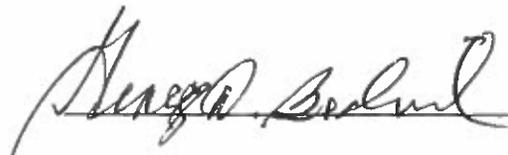
- IRRC # 2100 (#16-22) *Campaign Finance Reports Filed on Diskettes; and*
- **IRRC #2407 (#16-33) *Fees for Notary Service.***

This Order addresses IRRC #2407, which provided for notary service fees. This regulation was effective in 2005. Since that time, Act 97 of 2020 (Act 97) was passed to provide "for authority to perform notarial act, providing for notarial act performed for remotely located individual and further providing for notification regarding performance of notarial act on electronic record and selection of technology." The Committee expressed concern that this regulation is outdated and does not "account for the implementation and impact of the enactment of remote notarization" in Act 97.

The Department acknowledges this regulation should be updated to implement Act 97, as well as Act 73 of 2013, as amended in 2016, also known as the Revised Uniform Law on Notarial Acts (RULONA). The Department explains it is in the process of addressing these issues and that future RULONA regulations will repeal and replace the content of IRRC #2407.

Based upon this Commission's review of this regulation, information provided by the Department, and concerns raised by the Committee, we find the regulation is no longer in the public interest

under the RRA criteria of legislative intent, economic impact, reasonableness, need, and comments by the Committee. 8 *See* 71 P.S. § 745.5. We recommend the Department revise or repeal this regulation to align with current state law.



George D. Bedwick, Chairman

# **Comprehensive Analysis**

**Department of Aging**

**6 Pa. Code Chapter 15**

**IRRC Regulation No. 2077**

**Protective Services for Older Adults**

**Referred for Review by the House Aging and Older Adult Services Committee**

The House Aging and Older Adults Services Committee requested review of this regulation to determine if it is out of date, no longer has an impact on the Commonwealth, and/or is no longer in the best interest of the public. Chapter 15 governs the administration and provision of protective services for older adults, the mandatory reporting of the abuse of recipients of care, and required criminal history record information reports for applicants, employees, and administrators of facilities. The Independent Regulatory Review Commission (Commission) contacted the Department of Aging (Department) to request their response and cooperation. The Department notes that the regulation is currently utilized and relevant to the daily operation of providing protective services to older adults who need them.

The statutory authority for the regulation is the Older Adult Protective Services Act (OAPSA) (35 P.S. §§ 10225.101-10225.5102). OAPSA was last amended on November 6, 1987. The Department expects amendments to OAPSA to be introduced in the current or next legislative session and is coordinating efforts with the Department of Human Services in recommending amendments to OAPSA. The Department notes it will update its regulations to align with future amendments to OAPSA. Consequently, the Commission does not have any recommendations.

**Department of Aging**

**6 Pa. Code Chapter 22**

**IRRC Regulation No. 0947**

**Pharmaceutical Assistance Contract for the Elderly (PACE)**

**Referred for Review by the House Aging and Older Adult Services Committee**

The House Aging and Older Adults Services Committee requested review of this regulation to determine if it is out of date, no longer has an impact on the Commonwealth, and/or is no longer in the best interest of the public. Chapter 22 sets forth regulations governing the administration, provision, and receipt of prescription drug benefits available to older Pennsylvanians under the Pharmaceutical Assistance Contract for the Elderly (PACE) Program. The Independent Regulatory Review Commission (Commission) contacted the Department of Aging (Department) to request their response and cooperation. The Department states that the current PACE regulations remain relevant and continue to serve the administrative needs including applicant and provider enrollment, claims adjudication, and appeals. The Department also notes the regulations are consistent with underlying statutory authority. Consequently, the Commission does not have any recommendations.

**Department of Aging**

**6 Pa. Code Chapter 15**

**IRRC Regulation No. 0776**

**Protective Services for Older Adults**

**Referred for Review by the House Aging and Older Adult Services Committee**

The House Aging and Older Adults Services Committee requested review of this regulation to determine if it is out of date, no longer has an impact on the Commonwealth, and/or is no longer in the best interest of the public. Chapter 15 governs the administration and provision of protective services for older adults, the mandatory reporting of the abuse of recipients of care, and required criminal history record information reports for applicants, employees, and administrators of facilities. The Independent Regulatory Review Commission (Commission) contacted the Department of Aging (Department) to request their response and cooperation. The Department notes that the regulation is currently utilized and relevant to the daily operation of providing protective services to older adults who need them.

The statutory authority for the regulation is the Older Adult Protective Services Act (OAPSA) (35 P.S. §§10225.101-10225.5102). OAPSA was last amended on November 6, 1987. The Department expects amendments to OAPSA to be introduced in the current or next legislative session and is coordinating efforts with the Department of Human Services in recommending amendments to OAPSA. The Department notes it will update its regulations to align with future amendments to OAPSA. Consequently, the Commission does not have any recommendations.

**Department of Aging**

**6 Pa. Code Chapter 22**

**IRRC Regulation No. 0280**

**Pharmaceutical Assistance Contract for the Elderly (PACE)**

**Referred for Review by the House Aging and Older Adult Services Committee**

The House Aging and Older Adults Services Committee requested review of this regulation to determine if it is out of date, no longer has an impact on the Commonwealth, and/or is no longer in the best interest of the public. Chapter 22 sets forth regulations governing the administration, provision, and receipt of prescription drug benefits available to older Pennsylvanians under the Pharmaceutical Assistance Contract for the Elderly (PACE) Program. The Independent Regulatory Review Commission (Commission) contacted the Department of Aging (Department) to request their response and cooperation. The Department states that the current PACE regulations remain relevant and continue to serve the administrative needs including applicant and provider enrollment, claims adjudication, and appeals. The Department also notes the regulations are consistent with underlying statutory authority. Consequently, the Commission does not have any recommendations.

**Department of Aging**

**6 Pa. Code Chapter 22**

**IRRC Regulation No. 0160**

**Pharmaceutical Assistance Contract for the Elderly (PACE)**

**Referred for Review by the House Aging and Older Adult Services Committee**

The House Aging and Older Adult Services Committee requested review of this regulation to determine if it is out of date, no longer has an impact on the Commonwealth, and/or is no longer in the best interest of the public. Chapter 22 sets forth regulations governing the administration, provision, and receipt of prescription drug benefits available to older Pennsylvanians under the Pharmaceutical Assistance Contract for the Elderly (PACE) Program. The Department of Aging (Department) states that the current PACE regulations remain relevant and continue to serve the administrative needs including applicant and provider enrollment, claims adjudication, and appeals. The Department also notes the regulations are consistent with underlying statutory authority. Consequently, the Independent Regulatory Review Commission does not have any recommendations.

**Department of Human Services**

**55 Pa. Code Chapter 3700**

**Foster Family Care Agency**

**Referred for Review by the House Children and Youth Committee**

This regulation at 55 Pa. Code Chapter 3700 provides the minimum requirements for a Foster Care Agency and foster parents. The Independent Regulatory Review Commission (Commission) contacted the Department of Human Services (Department) to determine if the provisions in Chapter 3700 remain in the public interest in light of statutory changes.

The Department responded that the authority for Chapter 3700 remains in Articles II, VII, and IX of the Human Services Code (62 P.S. §§ 201 – 216, 701 – 774 and 901 - 922). The Department noted that the Chapter 3700 regulations authorize an agency to inspect and approve foster families and require the agency to implement family service plans, provide orientation and policies to foster families, and ensure that a child receives medical and dental care. Additionally, the existing regulations outline the requirements that an individual must meet to become an approved foster parent, such as training requirements, resident requirements, foster parent capability, safety requirements, and parameters for child discipline and punishment as a foster parent.

The Department explained that although Chapter 3700 was not recently promulgated, it is still currently utilized and relevant and does not conflict with legislative amendments enacted since promulgation. The Department also notes that Section 3700.5 provides for waivers should one be needed. We find the Department's response to our letter demonstrates that Chapter 3700 remains in the public interest. Consequently, the Commission has no recommendations.

**Department of Human Services**

**55 Pa. Code Chapter 1245**

**Ambulance Transportation**

**Referred for Review by the House Health Committee**

This regulation at 55 Pa. Code Chapter 1245 provides the structure for payment of ambulance transportation rendered to eligible recipients by ambulance providers enrolled in the Medical Assistance (MA) program. The Independent Regulatory Review Commission (Commission) contacted the Department of Human Services (Department) to determine if the provisions in Chapter 1245 remain in the public interest in light of several acts that were signed into law since 2009, including Act 37 of 2009 (Act 37) and Act 142 of 2016 (Act 142) (relating to emergency medical services system).

The Department responded that the authority for Chapter 1245 remains in section 403 and 443.4 of the Human Services Code (62 P.S. §§ 403 and 443.4), subject to general requirements in Chapter 1101 and limitations in Chapter 1150. Further, the Department noted that Act 37 and Act 142 do not relate to Medical Assistance payment provisions to ambulance providers; rather, they direct numerous actions of the Department of Health related to regulated and coordinated emergency medical service systems.

The Department sufficiently explained that Chapter 1245 continues to protect the public health, safety, and welfare by providing payment to providers who deliver MA services. Consequently, the Commission does not have any recommendations.

**Department of Human Services**

**55 Pa. Code Chapter 1249**

**Home Health Agency Services**

**Referred for Review by the House Health Committee**

This regulation at 55 Pa. Code Chapter 1249 provides the participation requirements and payment conditions for home health services and agencies participating in the Medical Assistance (MA) program, subject to the general requirements in Chapter 1101 and limitations in Chapter 1150. The Independent Regulatory Review Commission (Commission) contacted the Department of Human Services (Department) to determine if the provisions in Chapter 1249 remain in the public interest in light of statutory changes.

The Department responded that the authority for Chapter 1249 remains in sections 403 and 443.2(2) of the Human Services Code (62 P.S. §§ 403 and 443.2(2)). The Department further noted that payment to home health agencies is also subject to the general requirements under Chapter 1101 (relating to general provisions), the limitations established in Chapter 1150 (relating to MA Program payment policies), and the MA Program Fee schedule (55 Pa. Code §§ 1249.1, 1259.41, 1249.42, and 1249.51). The Department further acknowledged that Act 98 of 2022 (Act

98) abrogated Sections 1249.52(a)(1), 1249(a)(1), and 1249.54(a)(3) to remove the limitation that only a physician can order services. The Department believes the notes accompanying these three provisions accurately reflect Act 98.

Additionally, the Governor’s Regulatory Agenda published on March 16, 2024 lists the following proposed regulation for the summer of 2024:

This regulation revises Title 55 of the Pennsylvania Code, Chapters 1123 and 1249, to add Medical Assistance enrolled non-physician practitioners, allowed under State and Federal regulations, to the provider types who can prescribe home health services, durable medical equipment and medical supplies.

Given the Department’s response to our letter and the forthcoming proposed regulation identified in the Governor’s Regulatory Agenda, the Commission does not have any recommendations.

**Department of Labor and Industry**  
**34 Pa. Code Chapter 13, Subchapter C**  
**Propane and Liquefied Petroleum Gas**  
**Manufacture of Nitro and Amino Compounds**

**Referred for Review by the House Labor and Industry Committee**

The regulations at 34 Pa. Code Chapter 13 apply to the liquefied petroleum gas industry, including registration and permitting requirements; storage, transfer and sale; design and construction of equipment; and training programs. Subchapter C contains specific safety requirements relating to the manufacture of nitro and amino compounds and was last amended in 1968.

The House Labor and Industry Committee (Committee) requested a review “for repeal or modernization of the regulations.” We contacted the Department of Labor and Industry (Department) to convey the Committee’s concerns. We requested information regarding any planned updates or amendments pursuant to laws enacted subsequent to the promulgation of these regulations, as well as any planned meetings with stakeholder groups or other interested parties.

The Department responded: “The Department, specifically the Boiler Division of the Bureau of Occupational and Industrial Safety, continues to enforce these regulations. Further information is available on the Department’s website.”

Notwithstanding the vague response from the Department and the lack of specificity in the Committee’s request, there is insufficient information to determine whether the regulation is in the public interest. We have no recommendations.

**Department of Labor and Industry**  
**34 Pa. Code Chapter 31, Migrant Labor**  
**Subchapter A, Crew Leaders**  
**Subchapter B, Transportation of Workers**

**Referred for Review by the House Labor and Industry Committee**

The regulations at 34 Pa. Code Chapter 13 apply to migrant labors. Subchapters A and B apply to crew leaders and transportation, respectively. Chapter 13 was last amended in 1979.

The House Labor and Industry Committee (Committee) requested a review “for repeal or modernization of the regulations” because of amendments to the Seasonal Farm Labor Act, Act 93 of 1978 and an inaccurate citation. We contacted the Department of Labor and Industry (Department) to convey the Committee’s concerns. We requested information regarding any planned updates or amendments pursuant to laws enacted subsequent to the promulgation of these regulations, as well as any planned meetings with stakeholder groups or other interested parties.

The Department responded that “Although certain provisions of the Seasonal Farm Labor Act have been repealed, the bulk of the law remains in effect and the Department retains jurisdiction over enforcement.” The Department further explained that House Bill 1029 of 2023 (HB 1029) proposed substantial amendments to the Act but the legislature did not pass it. (HB 1029 is a one-page bill with only four limited amendments to change the number of hours that can be worked.) The Department stated that Chapter 31 is still useful in implementing the Act.

Absent any specified problem with the regulation, we have no recommendations.

## **Department of Labor and Industry**

### **34 Pa. Code Chapter 83**

#### **Welfare of Apprentices**

#### **Referred for Review by the House Labor and Industry Committee**

The regulations at 34 Pa. Code Chapter 83 apply to apprenticeship programs. These regulations were issued under the Apprenticeship and Training Act of 1961. They were last amended in 1979.

The House Labor and Industry Committee (Committee) requested a review to determine whether these regulations should be “modernized or amended.” The Committee explained that federal law has changed and that the types of occupations open to apprentices have been updated. Additionally, trade unions have requested updated and clear standards, and there are concerns about disparities in apprenticeship programs. We contacted the Department of Labor and Industry (Department) to convey the Committee’s concerns. We requested information regarding any planned updates or amendments pursuant to laws enacted subsequent to the promulgation of these regulations, as well as any planned meetings with stakeholder groups or other interested parties.

The Department acknowledged that the regulations are old, but it has an effective Apprenticeship and Training Office (ATO).

The ATO receives significant federal funding and is a federally recognized State Apprenticeship Agency. On January 17, 2024, [the Department] announced that it was proposing to update its regulations governing apprenticeships. These regulations will likely affect Pennsylvania’s apprenticeship program and may require statutory and regulatory changes. The Department believes it is prudent to wait to consider updating its regulations until the final federal regulations are promulgated.”

This response is ambiguous and the Act is old. However, while we have no specific recommendations, we urge the Department to engage its stakeholder groups and the General Assembly to determine the most effective way to maintain a current apprenticeship program.

**Department of Labor and Industry**

**34 Pa. Code Chapter 101, General Requirements**

**Subchapter E, Telephone Hearings**

**Referred for Review by the House Labor and Industry Committee**

The regulations at 34 Pa. Code Chapter 83 apply to telephone hearings and testimony. They were issued in 1997.

The House Labor and Industry Committee (Committee) requested a review to determine whether these regulations should be amended to reflect changes in the law. For example, the Unemployment Compensation Law, as amended by Act 6 of 2011, updated the requirements for allowing telephone testimony. However, Section 101.128 of regulations are inconsistent with these amendments. We contacted the Department of Labor and Industry (Department) to convey the Committee’s concerns. We requested information regarding any planned updates or amendments pursuant to laws enacted subsequent to the promulgation of these regulations, as well as any planned meetings with stakeholder groups or other interested parties.

The Department responded that it is currently in the process of amending Chapter 101, including section 101.128, because the regulations do not reflect current technologies and to update the unemployment compensation claims system. The Department has solicited comments from its stakeholders, held meetings with them throughout the state, and circulated a draft of the proposed amendments. The comment period on the draft amendments closed February 26, 2024. Once the Department completes its review of the input it received, it will move to the next step in the rulemaking process. The Governor’s Regulatory Agenda published July 22, 2023 in the *Pennsylvania Bulletin* also provided that Chapter 101 would begin the rulemaking process in the Spring of 2024.

In light of the Department’s response and the fact that it has commenced the process to update these regulations, the Independent Regulatory Review Commission does not have any recommendations.

**Department of Labor and Industry**

**34 Pa. Code Chapter 127**

**Workers’ Compensation Medical Cost Containment**

**Referred for Review by the House Labor and Industry Committee**

The regulations at 34 Pa. Code Chapter 127 apply to “payments made by insurers or self-insured employers for medical treatment and the review of medical treatment provided to employees with work-related injuries and illnesses.” 34 Pa. Code § 127.1. They were issued under the Workers’ Compensation Act (Act) in 1995 and amended in 1998.

The House Labor and Industry Committee (Committee) requested a review to determine whether these regulations should be amended because they “may not be consistent with the...Act.” The Committee specifically referenced Sections 127.208 (Time for payment of medical bills), 127.254 (Downcoding disputes), and 127.755 (Required notice of employe rights and duties). The Committee also noted that stakeholders stated some of the provisions are “confusing, unnecessary, or cumbersome.” We contacted the Department of Labor and Industry (Department) to convey the Committee’s concerns. We requested information regarding any planned updates or amendments pursuant to laws enacted subsequent to the promulgation of these regulations, as well as any planned meetings with stakeholder groups or other interested parties.

The Department responded that there have been no statutory amendments that would affect the three provisions cited by the Committee. Section 306(f.1) of the Act dealing with average wholesale price was amended in 2014 and is the subject of current litigation. However, that statutory provision does not relate to these regulatory sections. The Department further responded to the extent the Committee and any stakeholder believe the regulations are inconsistent with the law or create confusion, the Department would need more information to address such concerns. As such, the Department is unable to discern any issues as expressed by the Committee.

Based upon the Independent Regulatory Review Commission’s review of the Committee’s request and the Department’s response, we have no recommendations.

## **Department of Labor and Industry**

### **34 Pa. Code Chapter 131**

#### **Special Rules of Administrative Practices and Procedure before**

#### **Workers’ Compensation Judges**

#### **Referred for Review by the House Labor and Industry Committee**

The regulations at 34 Pa. Code Chapter 131 apply to proceedings before judges under the Workers Compensation Act and the Pennsylvania Occupational Disease Act. The regulations were issued in 1981 and last amended in 2014.

The House Labor and Industry Committee (Committee) requested a review to determine whether these regulations should be amended because stakeholders suggested that the timeframes for certain filings and responses could be “optimized” and that the regulation does not reflect a recent decision of the Pennsylvania Supreme Court in *Lorino v. WCAB*, 266 A.3d 487 (Pa. 2021). We contacted the Department of Labor and Industry (Department) to convey the Committee’s concerns. We requested information regarding any planned updates or amendments pursuant to laws enacted subsequent to the promulgation of these regulations, as well as any planned meetings with stakeholder groups or other interested parties.

The Department responded that the current timelines in the regulation are reasonable. It takes into account that not all filers use the Department’s system and may file physical documents outside that system. With respect to the *Lorino* decision, the Department is reviewing the issue “to better

understand the discretion afforded to judges in awarding attorneys’ fees in reasonable context cases.” The Department believes that promulgating a regulation at this stage is premature.

Based upon the Commission’s review of the Committee’s request and the Department’s response, we have no recommendations.

## **Department of Labor and Industry**

### **34 Pa. Code Chapter 401**

#### **Uniform Construction Code Training and Certification of Code Administrators**

##### **Referred for Review by the House Labor and Industry Committee**

The regulations at 34 Pa. Code Chapter 401 apply to training and certification of administrators of the Uniform Construction Code. Chapter 401 was issued in 2002. While the definitions were most recently amended in 2022, portions of this chapter were amended in 2006.

The House Labor and Industry Committee (Committee) requested a review to determine whether these regulations should be amended to reflect issues raised by stakeholders and interested parties. Some of the issues include amending the grounds for corrective action against a code administrator or third-party agency, authorizing a class of certification for trainees, allowing the ability to place a certification in escrow or in a dormant status under certain circumstances. We contacted the Department of Labor and Industry (Department) to convey the Committee’s concerns. We requested information regarding any planned updates or amendments pursuant to laws enacted subsequent to the promulgation of these regulations, as well as any planned meetings with stakeholder groups or other interested parties.

The Department responded that it continues to implement these regulations to certify and decertify Code Administrators, oversee continuing education requirements, and maintain a list of Code Administrators. The Department maintained that the existing complaint process and timelines are “reasonable and workable.” It explained that changes to expand on-the-job training and allow for submission of reports by trainees should be addressed legislatively. The Department further explained that it is considering provisions relating to escrow and reciprocity with other states; however, there is currently no timeline for moving these issues to a formal rulemaking process.

Based upon the Independent Regulatory Review Commission’s review of the Committee’s request and the Department’s response, we have no recommendations.

**Pennsylvania Commission on Crime and Delinquency**

**37 Pa. Code Chapter 411**

**IRRC Regulation No. 2765**

**Crime Victims Compensation**

**Referred for Review by the House Judiciary Committee**

The House Judiciary Committee requested review of this regulation at 37 Pa. Code Chapter 411 which increased reimbursement to crime victims in accordance with rising costs, expanded eligibility for reimbursement, and simplified claims processing procedures, while reducing the percentage that the Office of Victims' Services may reimburse hospitals and other licensed health care providers to conform to the practice of other third-party payors. The Independent Regulatory Review Commission (Commission) contacted the Pennsylvania Commission on Crime and Delinquency (PCCD) to note that Act 77 of 2022 (Act 77) contained omnibus amendments to the Crime Victims Act which appear to impact the PCCD's existing regulations. We requested information regarding any planned amendments to regulation #2765 pursuant to Act 77 or other laws as well as any planned meetings with stakeholder groups or other interested parties.

The PCCD responded that it will update the regulations to reflect changes needed as a result of Act 77 as well as other changes to modernize language. The PCCD further responded that it will be soliciting input from stakeholders, including but not limited to, victim service agencies, district attorneys, and victims/survivors regarding revisions to the crime compensation regulations.

The PCCD reiterated its intent to proceed with a rulemaking in the Governor's Regulatory Agenda published in the July 20, 2024, *Pennsylvania Bulletin* which states:

The Victims Services Advisory Committee, an advisory board within the Commission on Crime and Delinquency, plans to amend the regulations at 37 Pa. Code Chapter 411 (relating to Crime Victims Compensation) to update policies and procedures to reflect statutory changes in Act 77 of 2022 (Act of Jul. 11, 2022, P.L. 775, No. 77).

Given the PCCD's stated commitment in its response letter to the Commission, as substantiated by the Governor's Regulatory Agenda, the Commission does not have any recommendations.

**Pennsylvania Commission on Crime and Delinquency**

**37 Pa. Code Chapter 411**

**IRRC Regulation No. 2428**

**Crime Victims Compensation**

**Referred for Review by the House Judiciary Committee**

The House Judiciary Committee requested review of the regulation at 37 Pa. Code Chapter 411 which simplified and clarified claims processing, determination and appeals procedures, and incorporated into the regulation a policy statement pertaining to the Schedule of Compensation Limits and Reimbursement Rates for the Crime Victims Compensation Program. The Independent Regulatory Review Commission (Commission) contacted the Pennsylvania Commission on Crime and Delinquency (PCCD) to note that Act 77 of 2022 (Act 77) contained omnibus amendments to the Crime Victims Act which appear to impact the PCCD's existing regulations. We requested information regarding any planned amendments to regulation #2428 pursuant to Act 77 or other laws as well as any planned meetings with stakeholder groups or other interested parties.

The PCCD responded that it will update the regulations to reflect changes needed as a result of Act 77 as well as other changes to modernize language. The PCCD further responded that it will be soliciting input from stakeholders, including but not limited to, victim service agencies, district attorneys, and victims/survivors regarding revisions to the crime compensation regulations.

The PCCD reiterated its intent to submit a rulemaking in the Governor's Regulatory Agenda published in the July 20, 2024, *Pennsylvania Bulletin* which states:

The Victims Services Advisory Committee, an advisory board within the Commission on Crime and Delinquency, plans to amend the regulations at 37 Pa. Code Chapter 411 (relating to Crime Victims Compensation) to update policies and procedures to reflect statutory changes in Act 77 of 2022 (Act of Jul. 11, 2022, P.L. 775, No. 77).

Given the PCCD's stated commitment in its response letter to the Commission, as substantiated by the Governor's Regulatory Agenda, the Commission does not have any recommendations.

**Department of General Services**

**4 Pa. Code Chapter 65**

**IRRC Regulation No. 2303**

**State Art Commission**

**Referred for Review by the House State Government Committee**

This regulation repealed 4 PA Code, Chapter 65. This Chapter contained the criteria to be used by the State Art Commission when reviewing projects. The State Art Commission went out of existence due to the General Assembly not reauthorizing it under the former Sunset Act (formerly 71 PS 1795.6(3)). As a result, the regulations were obsolete. Currently, 4 PA Code, Chapter 65 does not contain any regulations and is Reserved for possible future use.

This regulation was clearly in the public interest because it repealed obsolete regulations. As such and because this regulation was the result of a determination made by the General Assembly, the Independent Regulatory Review Commission does not have any recommendations.

**Department of General Services**

**4 Pa. Code Chapter 63**

**IRRC Regulation No. 2304**

**General Conditions of the Contract**

**Referred for Review by the House State Government Committee**

This regulation repealed 4 Pa. Code Chapter 63. Chapter 63 related to contract documents between the Department of General Services (Department) and its contractors for construction projects. The Independent Regulatory Review Commission (Commission) contacted the Department to request further information on the repeal. The Department noted that repeal of the regulation permits flexibility and allows the Department to modify construction contract provisions as necessary to meet individual project requirements. The provisions of Chapter 63 were reserved on December 3, 2004, effective December 4, 2004.

The regulation was clearly in the public interest because it repealed provisions that were inconsistent with the Department's General Conditions of Contract. Consequently, the Commission does not have any recommendations.

**Department of General Services**

**4 Pa. Code Chapter 61**

**IRRC Regulation No. 2305**

**Instructions to Bidders**

**Referred for Review by the House State Government Committee**

This regulation repealed 4 Pa. Code Chapter 61 which set forth how bidders must prepare and resubmit bids on Department of General Services (Department) construction projects. The Independent Regulatory Review Commission (Commission) contacted the Department to request further information on the repeal. The Department noted that bid instructions established by regulation do not allow for flexibility and bid instructions must be customized by the Department for individual projects. The Department further stated that it substantially modified the bid instructions in the years since 1975 without updating the regulations. Consequently, the regulations in Chapter 61 were inconsistent with the Department’s ongoing bid instructions. The provisions of Chapter 61 were reserved on December 3, 2004, effective December 4, 2004.

The regulation was clearly in the public interest because it repealed provisions that were inconsistent with the Department’s Instructions to Bidders. Therefore, the Commission does not have any recommendations.

**Department of State**

**49 Pa. Code Chapters 51, 53, and 55**

**IRRC Regulation No. 1837**

**Charitable Organizations**

**Referred for Review by the House State Government Committee**

This regulation repealed 49 Pa. Code Chapters 51, 53, and 55. The House State Government Committee noted that these regulations were reviewed and approved for repeal under the Regulatory Review Act. We note that the publication of final regulations and publication of the *Pennsylvania Code (Code)* fall under the purview of the Legislative Reference Bureau. Additionally, the publication of these regulations in the *Code* are properly designated as “[Reserved]” in accordance with the *Pennsylvania Code and Bulletin Style Manual*, Subsections 2.2(a) and (c). Consequently, the Independent Regulatory Review Commission does not have any recommendations.

**Department of State**  
**19 Pa. Code Chapter 41**  
**IRRC Regulation No. 1906**  
**Nonprofit Corporations Generally**

**Referred for Review by the House State Government Committee**

This regulation repealed 19 Pa. Code § 41.4(d). The House State Government Committee noted the repeal and questioned if the regulation’s continued maintenance is necessary. The regulation was reviewed and approved for repeal under the Regulatory Review Act. We note that the publication of final regulations and publication of the *Pennsylvania Code (Code)* fall under the purview of the Legislative Reference Bureau. The regulation was clearly in the public interest because it repealed an obsolete provision. Consequently, the Independent Regulatory Review Commission does not have any recommendations.

**Department of General Services**  
**4 Pa. Code Chapters 51, 53, and 55**  
**IRRC Regulation No. 2574**

**Distribution of Federally Donated Foods to Needy Households**

**Referred for Review by the House State Government Committee**

This regulation repealed 4 Pa. Code Chapters 51, 53, and 55. These chapters addressed the distribution of federally donated foods to needy households. The responsibility for this program was transferred to the Department of Agriculture pursuant to 71 P.S. § 751-28 (Reorganization Plan No. 1 of 1981) (relating to the transfer of functions, powers and duties from the Department of General Services, Bureau of Government Donated Food to the Department of Agriculture, Bureau of Government Donated Food). In 1992, the General Assembly formalized the program by enacting the State Food Purchase Program Act, act of Dec. 11, 1992 (P.L. 807, No. 129) (62 P.S. §§ 4041-4049) (Act). The Act directed the Department of Agriculture to develop rules and regulations. The provisions of Chapters 51, 53, and 55 were reserved on December 1, 2006, effective December 2, 2006.

The regulation was clearly in the public interest because it repealed obsolete regulations. Consequently, the Independent Regulatory Review Commission does not have any recommendations.

**Department of General Services**

**4 Pa. Code Chapter 62**

**IRRC Regulation No. 3191**

**Committee on Construction Contract Documents**

**Referred for Review by the House State Government Committee**

This regulation repealed 4 Pa. Code Chapter 62. Chapter 62 addressed the creation and operation of the Committee on Construction Contract Documents (Committee). Section 6(a) of the Act of May 15, 1998 (P.L. 358, No. 57), which enacted the Commonwealth Procurement Code, expressly repealed section 638 of the Administrative Code which created the Committee. Therefore, the Committee no longer exists. The provisions of Chapter 62 were reserved on March 16, 2018, effective March 17, 2018.

The regulation was clearly in the public interest because it repealed an obsolete regulation. Consequently, the Independent Regulatory Review Commission does not have any recommendations.

**Department of General Services**

**4 Pa. Code Chapter 62**

**IRRC Regulation No. 3192**

**Committee on Construction Contract Documents**

**Referred for Review by the House State Government Committee**

This regulation repealed 4 PA Code, Chapter 62. This Chapter addressed the creation and operation of the Committee on Construction Contract Documents. The Commonwealth Procurement Code adopted by the General Assembly expressly repealed the provision in the Administrative Code of 1929 that created the Committee on Construction Contract Documents (see Section 6(a) of the Act of May 15, 1998 (P.L. 358, No. 57)). As a result, the regulations were obsolete. Currently, 4 PA Code, Chapter 62 does not contain any regulations and is Reserved for possible future use.

This regulation was clearly in the public interest because it repealed obsolete regulations. As such and because this regulation was the result of an act of the General Assembly, the Independent Regulatory Review Commission does not have any recommendations.

**Department of General Services**

**4 Pa. Code Chapter 67**

**IRRC Regulation No. 3193**

**Emergency Construction Repairs**

**Referred for Review by the House State Government Committee**

This regulation repealed 4 PA Code, Chapter 67. This Chapter related to the procurement and expeditious processing of contract awards in excess of \$25,000 on completed construction projects in emergency situations where conditions hazardous to the Commonwealth and its citizens required an immediate response. The Chapter being repealed had been promulgated under the former Sections 638, 642, and 643 of the Administrative Code of 1929 (formerly 71 P.S. 638, 642, and 643). Those provisions of the Administrative Code of 1929 were specifically repealed by Section 6(a) of the Commonwealth Procurement Code (act of May 15, 1998, P.L. 358, No. 57). Emergency contracting is now governed by Section 516 of the Commonwealth Procurement Code (62 Pa.C.S. 516). As a result, this Chapter was obsolete. Currently, 4 PA Code, Chapter 67 does not contain any regulations and is Reserved for possible future use.

This regulation was clearly in the public interest because it repealed obsolete regulations. As such and because this regulation was the result of a Repeal made by the General Assembly, the Independent Regulatory Review Commission does not have any recommendations.

**Department of General Services**

**4 Pa. Code Chapter 69**

**IRRC Regulation No. 3194**

**Methods of Awarding Contracts**

**Referred for Review by the House State Government Committee**

This regulation repealed 4 Pa. Code Chapter 69. Chapter 69 addressed the procedures, responsibilities and guidance for awarding contracts for the purchase of goods and supplies. The provisions of Chapter 69 were issued under sections 507, 2401.1, 2403, and 2409 of The Administrative Code of 1929 (71 P.S. §§ 187, 631.1, 633, and 639) which authorized the Department of General Services to engage in various types of contracting. The Department promulgated Chapter 69 in 1980. Section 4 of Act 1998-57, which established the Pennsylvania Procurement Code, states that “except as otherwise provided, this act is intended to provide a complete and exclusive procedure to govern the procurement by Commonwealth agencies of supplies, services and construction, including the disposal of surplus supplies.” All of the methods of awarding contracts listed in Chapter 69 are now addressed by an equivalent section in Chapter 5 of the Procurement Code. The provisions of Chapter 69 were reserved on March 16, 2018, effective March 17, 2018.

The regulation was clearly in the public interest because it repealed an obsolete regulation. Consequently, the Independent Regulatory Review Commission does not have any recommendations.

**Joint Committee on Documents**

**1 Pa. Code Chapter 13**

**IRRC Regulation No. 1532**

**Diskette Requirements**

**Referred for Review by the House State Government Committee**

Section 13.11 of this regulation requires submission of a diskette and printed copies of documents to be submitted to the Legislative Reference Bureau (Bureau). The Independent Regulatory Review Commission (Commission) contacted the Joint Committee on Documents (JCD) to determine if this regulation remains in the public interest in light of current alternative methods of delivery, including electronic delivery.

The JCD responded that failure to submit a diskette under Section 13.11(b) does not impact the validity of a document submitted to the Bureau electronically as Section 13.11(d) provides that agencies may submit rulemakings in an alternate format other than a paper copy or a diskette. The JCD further noted that it will consider publication of a notice in the *Pennsylvania Bulletin* identifying a preferred format for submission of documents under Section 12.11(d).

The JCD sufficiently explained that the regulation allows for an alternative format for submitting documents. Consequently, the Commission does not have any recommendations.

**Joint Committee on Documents**

**1 Pa. Code Chapter 1**

**IRRC Regulation No. 2861**

**Preliminary Provisions; Definitions**

**Referred for Review by the House State Government Committee**

The House State Government Committee requested review of this regulation to determine if it is in alignment with Act 82 of 2021 (Act 82). Act 82 expanded the existing statutory definitions for “Legal material” and “Official publisher” to include the *Pa. Bulletin* and the *Pennsylvania Code* and the Joint Committee on Documents (JCD). Regulation #2861 amended 1 Pa. Code § 1.4 to define "copy" to include a printed or electronic version. The Independent Regulatory Review Commission (Commission) contacted the JCD to determine if the regulation aligns with Act 82.

The JCD responded that as “Legal material” and “Official publisher” do not appear in 1 Pa. Code Pt. I, no amendment is required to align any terms defined in 1 Pa. Code Part I with the statutory

terms defined in 44 Pa. C.S. § 702, as amended under Act 82. Consequently, the Commission does not have any recommendations.

### **Independent Regulatory Review Commission**

#### **1 Pa. Code Section 315(a)**

#### **IRRC Regulation No. 3125**

#### **General Revisions**

#### **Referred for Review by the House State Government Committee**

The House State Government Committee (Committee) questioned the fact that the Independent Regulatory Review Commission’s (Commission) regulation at 1 Pa. Code § 315.1(a) does not explicitly state the Commission “shall perform the review.” The Committee requested additional review to determine whether further updates to the regulations are necessary.

The Commission sought review of this matter from the Joint Committee on Documents (JCD). In its response, the JCD noted that “while Section 315.1(a) does not contain the phrase ‘shall perform the review,’ the requirement to assign the review high priority accomplishes the same goal as explicitly directing IRRC [the Commission] to perform the review and assign it high priority as required under Section 8.1.” The JCD further noted that § 315.1(a) describes the manner in which the Commission must perform the required review. Consequently, the Commission does not have any recommendations.

### **Department of State**

#### **IRRC Regulation No. 0049**

#### **Names, Trademarks and Service Marks**

#### **Referred for Review by the House State Government Committee**

The House State Government Committee noted the absence of detailed information on the Independent Regulatory Review Commission’s (Commission) website concerning this regulation. This regulation pre-dates the creation of the Commission’s website. Online information concerning this regulation is therefore limited. The Commission requested information on the regulation from the Department of State (DOS). In its response, DOS noted that the Commission received the proposed regulation in 1983, but it does not appear to have been completed or published. DOS further notes that current 19 Pa. Code Chapter 91 (relating to Marks and Insignia) was promulgated on April 17, 1992, effective April 18, 1992. DOS concludes that regulation #0049 was never completed or was superseded by the 1992 rulemaking. Consequently, the Commission does not have any recommendations.

**Department of State**

**IRRC Regulation No. 0116**

**Notary Public Fee Schedule**

**Referred for Review by the House State Government Committee**

The House State Government Committee noted the absence of detailed information on the Independent Regulatory Review Commission's (Commission) website concerning this regulation. This regulation pre-dates the creation of the Commission's website. Online information concerning this regulation is therefore limited. The Commission requested information on the regulation from the Department of State (DOS). In its response, DOS noted the regulation was published on February 10, 1984, effective February 11, 1984 and was replaced by regulation #2407 (Fees for Notary Services) in 2005. Consequently, the Commission does not have any recommendations.

**Department of State**

**IRRC Regulation No. 0877**

**Uniform Commercial Code**

**Referred for Review by the House State Government Committee**

The House State Government Committee noted that regulation #0877 has been in effect for at least three years, but there is no corresponding information or documentation on the Independent Regulatory Review Commission's (Commission) website. The Commission requested information on the regulation from the Department of State (DOS). In its response, DOS noted the rulemaking reserved all of 19 Pa. Code Chapter 55 as a final-omitted regulation on September 8, 1989, effective September 9, 1989. The remaining regulation relating to the Uniform Commercial Code (UCC) is at 4 Pa. Code § 95.101 (relating to Official forms). DOS has no other UCC regulations but does intend to promulgate modern UCC regulations using the most recent International Association of Commercial Administrators (IACA) Model Rules. The timeline for this rulemaking is dependent on IACA adopting an updated version of the Model Rules and DOS bringing on additional resources to assist with the drafting and promulgation of the rulemaking. Consequently, the Commission does not have any recommendations.

**Department of State**

**IRRC Regulation No. 1245**

**General Revisions**

**Referred for Review by the House State Government Committee**

The House State Government Committee noted that regulation #1245 has been in effect for at least three years, but there is no corresponding information or documentation on the Independent

Regulatory Review Commission’s (Commission) website. The Commission requested information on the regulation from the Department of State (DOS). In its response, DOS noted the rulemaking was published April 17, 1992, effective April 18, 1992. The regulation affected the following portions of the *Pennsylvania Code*: 19 Pa. Code Chapters 1, 3, 11, 13, and 17. The final-form regulation was submitted to the Commission on February 12, 1992, and approved by law on March 4, 1992. The final regulation was published in the *Pennsylvania Bulletin* on April 18, 1992. DOS notes that due to its record retention policy, it no longer retains any files with information about the rulemaking, but it does intend to promulgate updated regulations for the Bureau of Corporations and Charitable Organizations, which would reflect changes in the Associations Code relating to business organization filings. The timeline for the rulemaking is dependent upon DOS bringing on additional resources to assist with the drafting and promulgation of further rulemaking. Consequently, the Commission does not have any recommendations.

### **Joint Committee on Documents**

#### **1 Pa. Code Chapter 13**

#### **IRRC Regulation No. 102 (#53-1)**

#### **Effective Date of Regulations**

#### **Referred for Review by the House State Government Committee**

Part I of Title 1 of the *Pennsylvania Code (Code)* contains regulations for the Joint Committee on Documents (JCD). The Legislative Reference Bureau (Bureau) coordinates the publication of the *Code* and the *Pennsylvania Bulletin (Bulletin)* under the direction and supervision of the JCD. Chapter 13 covers the preparation and transmission of documents deposited with the Bureau by government entities in the Commonwealth. See 1 Pa. Code §§ 13.1-13.93. Sections 13.55 (Filing for Public Inspection), 13.74 (Effective Date of Regulations), and 13.82 (Timing for Regular Schedule) were issued under the authority of 45 P.S. §§ 502, 503, 722, and 903. The House State Government Committee requested a review of this regulation because there is no corresponding information or documentation on IRRC’s website. This regulation pre-dates the creation of the Commission’s website. Online information concerning this regulation is therefore limited.

Sections 13.55 and 13.74 allow for public inspection and regulations to be effective before the date of publication in the *Bulletin*. 1 Pa. Code §§ 13.55 and 13.74. There is also a regular schedule for document publication. 1 Pa. Code § 13.82.

IRRC Regulation #102 was approved on December 2, 1983.

The JCD’s response demonstrates that no updates to this regulation are required and it remains in the public interest. Consequently, the Independent Regulatory Review Commission does not have any recommendations.

**Joint Committee on Documents**

**1 Pa. Code Chapters 1, 3, 9, 13, 17**

**IRRC Regulation No. 0439 (#53-3)**

**Statements of Policy**

**Referred for Review by the House State Government Committee**

Part I of Title 1 of the *Pennsylvania Code (Code)* contains regulations for the Joint Committee on Documents (JCD). The Legislative Reference Bureau (Bureau) coordinates the publication of the *Code* and the *Pennsylvania Bulletin (Bulletin)* under the direction and supervision of the JCD. This regulation established a procedure for identifying and publishing statements of policy, and codifying existing statements of policy. The specific provisions are the following: Sections 1.4 (Definitions), 3.21 (General), 3.25 (Rules and regulations), 3.26a (Statements of policy), 9.54 (Statements of general policy), 9.301 (Unpublished statements of policy adopted prior to January 1, 1985), 9.302 (Statements of policy adopted after January 1, 1985), 9.303 (Format of statements of policy), 13.1 (Undeposited documents), 13.5 (Deposit of management directives), and 17.56 (Information on document drafting and publication assistance). These provisions were issued under section 506 of The Administrative Code of 1929 (71 P.S. § 186), section 206 of Act 240 of 1968 (45 P.S. § 1206), 45 Pa.C.S. §§ 503, 506, 507, and 701. The House State Government Committee requested a review of this regulation because there is no corresponding information or documentation on IRRC’s website. This regulation pre-dates the creation of the Commission’s website. Online information concerning this regulation is therefore limited.

IRRC Regulation #439 was approved on June 18, 1986.

Our review and the JCD’s response by letter dated January 5, 2024, demonstrate that no updates to this regulation are required and it remains in the public interest. Consequently, the Independent Regulatory Review Commission has no recommendations.

**Joint Committee on Documents**

**1 Pa. Code § 5.2**

**IRRC Regulation No. 0660**

**Distribution of Bound Volumes of Official Text**

**Referred for Review by the House State Government Committee**

Part I of Title 1 of the *Pennsylvania Code (Code)* contains regulations for the Joint Committee on Documents (JCD). The Legislative Reference Bureau (Bureau) coordinates the publication of the *Code* and the *Pennsylvania Bulletin (Bulletin)* under the direction and supervision of the JCD. This regulation allows law schools in Pennsylvania to make written requests to receive bound serial page books. 1 Pa. Code § 5.2(b)(7). It was issued under the authority of 45 Pa.C.S. §§ 503, 506-506, 90 (1-907). The House State Government Committee requested a review of this regulation

because there is no corresponding information or documentation on the Independent Regulatory Review Commission’s (Commission) website. This regulation pre-dates the creation of the Commission’s website. Online information concerning this regulation is therefore limited.

IRRC Regulation #660 was approved as a final-omitted regulation on January 6, 1988.

Our review and the JCD’s response by letter dated January 5, 2024, demonstrate that no updates to this regulation are required and it remains in the public interest. Consequently, the Commission has no recommendations.

### **Joint Committee on Documents**

#### **1 Pa. Code § 15.21, 15.24**

#### **IRRC Regulation No. 1213 (#53-4)**

#### **Bulletin and Related Documents Charge**

#### **Referred for Review by the House State Government Committee**

Part I of Title 1 of the *Pennsylvania Code (Code)* contains regulations for the Joint Committee on Documents (JCD). The Legislative Reference Bureau (Bureau) coordinates the publication of the *Code* and the *Pennsylvania Bulletin (Bulletin)* under the direction and supervision of the JCD. Chapter 15 addresses the distribution of publications and was issued under the authority of 45 Pa.C.S. §§ 502-504 and 729-731; and sections 501, 502, 506, 507, and 521 of the Administrative Code of 1929 (71 P.A. §§ 181, 182, 186, 187, and 201). Due to increases in the cost of production, this regulation raised the price of the *Bulletin* subscription from \$45 a year to \$65, and increased the cost of other related documents. The House State Government Committee requested a review of this regulation because there is no corresponding information or documentation on the Independent Regulatory Review Commission’s (Commission) website. This regulation pre-dates the creation of the Commission’s website. Online information concerning this regulation is therefore limited.

IRRC Regulation #1213 was approved on October 25, 1991. The regulation was subsequently rescinded in 1995 because the competitive bidding process led to the use of a private company to print and distribute the *Code* and *Bulletin*.

Consequently, the Commission has no recommendations.

**Joint Committee on Documents**

**1 Pa. Code Chapter 15**

**IRRC Regulation No. 1510 (#53-6)**

**Department of Banking: Automatic Subscriptions**

**Referred for Review by the House State Government Committee**

Part I of Title 1 of the *Pennsylvania Code (Code)* contains regulations for the Joint Committee on Documents (JCD). The Legislative Reference Bureau (Bureau) coordinates the publication of the *Code* and the *Pennsylvania Bulletin (Bulletin)* under the direction and supervision of the JCD. This regulation removed the automatic subscription provision for the *Code* and *Bulletin* as they related to the Department of Banking. 1 Pa. Code § 15.23(b). It was issued under the authority of The Administrative Code of 1929 (71 P.S §§ 66, 186, 411, and 412), and 45 Pa. C.S. §§502-504 and 729-731. The House State Government Committee requested a review of this regulation because there is no corresponding information or documentation on the Independent Regulatory Review Commission’s (Commission) website. This regulation pre-dates the creation of the Commission’s website. Online information concerning this regulation is therefore limited.

IRRC Regulation #1510 was approved on March 29, 1994. On July 22, 1995, Chapter 15 was updated to remove the Insurance Department’s automatic subscription, which was the final automatic subscription in the *Code*. 1 Pa. Code § 15.23(c).

Our review and the JCD’s response demonstrate that the regulation is still in the public interest. Consequently, the Commission has no recommendations.

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# *Appendix*

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# **Regulatory Review Act**

## **Section 8.1**

## Section 8.1. Existing regulations.

The commission, on its motion or at the request of any person or member of the General Assembly, may review any existing regulation which has been in effect for at least three years. If a committee of the Senate or the House of Representatives requests a review of an existing regulation, the commission shall perform the review and shall assign it high priority. **The commission may submit recommendations to an agency recommending changes in existing regulations if it finds the existing regulations to be contrary to the public interest** under the criteria established in section 5.2. The commission may also make recommendations to the General Assembly and the Governor for statutory changes if the commission finds that any existing regulation may be contrary to the public interest.

71 P.S. § 745.8a. (Emphasis added)

# **Committee Letters**

Gary Day, Member  
187<sup>th</sup> Legislative District

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House of Representatives  
Commonwealth of Pennsylvania  
Harrisburg

COMMITTEES:

AGING AND OLDER ADULT  
SERVICES, CHAIRMAN  
PROFESSIONAL LICENSURE

E-MAIL: [gday@pahousegop.com](mailto:gday@pahousegop.com)  
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September 14, 2022

Chairman Geroge D. Bedwick  
Vice Chairman John F. Mizner, Esq.  
Commissioner John J. Soroko, Esq.  
Commissioner Murray Ufberg, Esq.  
Commissioner Dennis A. Watson, Esq.  
Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, PA 17101

Dear Commissioners,

As members of the House Aging and Older Adult Services Committee, pursuant to Section 8.1 of the Regulatory Review Act, we request that the Independent Regulatory Review Commission (IRRC) review the following list of regulations that have been in effect for at least 3 years. With the review of these regulations, we believe that IRRC may find outdated regulations that no longer pertain to statute or practices:

- No. 2077 PA Department of Aging: 1-17: Protective Services for Older Adults
- No. 1260 PA Department of Aging: 1-15: Family Caregiver
- No. 947 PA Department of Aging: 1-10: Pharmaceutical Assistance Contract for the Elderly (PACE)
- No. 818 PA Department of Aging: 1-11: Domiciliary Care Services for Adults
- No. 776 PA Department of Aging: 1-12: Protective Services for Older Adults
- No. 280 PA Department of Aging: 1-5: Pharmaceutical Assistance Contract for the Elderly (PACE)
- No. 160 PA Department of Aging: 1-4: Pharmaceutical Assistance Contract for the Elderly (PACE)

We respectfully request that IRRC examine the regulations and identify any unnecessary regulations that are out of date, no longer have impact on the Commonwealth, and/or are no longer in the best interest of the public. In conducting such a review, IRRC may submit recommendations to an agency recommending changes in existing regulations if the Commission

finds that the existing regulations are contrary to the public interest under the criteria established in section 5.2 of the Act. Further, the Commission may also make recommendations to the General Assembly and the Governor for statutory changes if the Commission finds that any existing regulation may be contrary to the public interest.

We, the undersigned, constituting a majority of the members of the House Aging and Older Adult Services Committee, are hereby requesting a review of the above regulations pursuant to Section 8.1 of the Regulatory Review Act. If you have any questions or if we can be of further assistance, you may contact Representative Gary Day, Majority Chair of the House Aging and Older Adult Services Committee. We respectfully request receipt of this letter and the intent of IRRC by November 30, 2022.

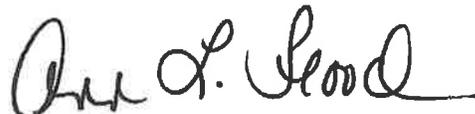
Sincerely,



Gary W. Day  
Majority Chairman, Aging & Older Adult Services Committee



Eric Davanzo  
58<sup>th</sup> Legislative District



Ann Flood  
138<sup>th</sup> Legislative District



Mark M. Gillen  
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Tim Hennessey  
26<sup>th</sup> Legislative District



Mike Jones  
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Craig Williams  
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**House of Representatives**  
Commonwealth of Pennsylvania  
Harrisburg  
September 21, 2022

**COMMITTEES**

Children and Youth, Majority Chair  
Consumer Affairs  
Rules  
Policy, Deputy Chair

PHEAA Board Member  
Chairman of Executive Board  
PCCD Board Member

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Chairman Geroge D. Bedwick  
Vice Chairman John F. Mizner, Esq.  
Commissioner John J. Soroko, Esq.  
Commissioner Murray Ufberg, Esq.  
Commissioner Dennis A. Watson, Esq.  
Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, PA 17101

**RECEIVED**

SEP 27 2022

Independent Regulatory  
Review Commission

Dear Commissioners,

The Pennsylvania House Children & Youth Committee, pursuant to Section 8.1 of the Regulatory Review Act, respectfully requests that the Independent Regulatory Review Commission review 55 Pa. Code 3700, which has been in effect since 1987.

Earlier this session, the Committee held a series of roundtable discussions with county children and youth agency administrators around the Commonwealth. During the course of these discussions, numerous administrators identified particular provisions in the 3700 regulation, which pertains to licensing of foster families, that were either unnecessary or unduly burdensome. Additionally, it has come to our attention that certain important statutes pertaining to foster families are not being enforced, due at least in part to the fact that the requirements of the statute are reflected nowhere in the regulation. Other provisions of the regulation are no longer recognized as valid, and their continuation "on the books" has caused considerable confusion and error in some cases.

For these reasons, we respectfully request that IRRC examine the regulation in hope that those provisions that are unnecessary, out of date, no longer have impact on the Commonwealth, or which are no longer in the best interest of the public may be identified. We would also urge you to meaningfully engage the regulated community when reviewing the regulation, including not only county children and youth agencies, but also foster care and adoption agencies and, perhaps most importantly, foster families.

The Children & Youth Committee met on September 21, 2022 and unanimously voted in support of sending this letter. On behalf of the Committee we thank you for fulfilling your duties under Section 8.1 of the Regulatory Review Act and looks forward to learning the results of your careful review.

Sincerely,

Handwritten signature of Sheryl M. Delozier in blue ink.

Sheryl M. Delozier  
Majority Chair  
Children and Youth Committee

Handwritten signature of Pamela A. DeLissio in blue ink.

Pamela A. DeLissio  
Minority Chair  
Children and Youth Committee

SMD/jrh

**KATHY L. RAPP, MEMBER**  
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**House of Representatives**  
Commonwealth of Pennsylvania  
Harrisburg

**COMMITTEES**  
**HEALTH, MAJORITY CHAIR**  
ENVIRONMENTAL RESOURCES & ENERGY

**PRO-LIFE CAUCUS CO-CHAIR**

**APPOINTMENTS**  
HARDWOODS DEVELOPMENT COUNCIL

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September 21, 2022

George D. Bedwick, Chairman  
John F. Mizner, Esq., Vice-Chairman  
John J. Soroko, Esq., Commissioner  
Murray Ufberg, Esq., Commissioner  
Dennis A. Watson, Esq., Commissioner  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

**RECEIVED**

SEP 21 2022

Independent Regulatory  
Review Commission

Commissioners of the Independent Regulatory Review Commission:

Re: Review of Regulations

Pursuant to section 8.1 of the Regulatory Review Act (Act), a Committee of the Senate or House of Representatives may request a review of an existing regulation which has been in effect for at least three years. If a Committee makes such a request, the Independent Regulatory Review Commission (Commission) "shall perform the review and shall assign it high priority." In conducting such a review, the Commission may submit recommendations to an agency recommending changes in existing regulations if the Commission finds that the existing regulations are contrary to the public interest under the criteria established in section 5.2 of the Act. Further, the Commission may also make recommendations to the General Assembly and the Governor for statutory changes if the Commission finds that any existing regulation may be contrary to the public interest.

On September 21, 2022, the House Health Committee held a voting meeting in which the Committee considered and approved a motion authorizing me, as the Majority Chair of the Committee, to submit a letter to the Commission to request a review of certain regulations that are listed below. Specifically, pursuant to section 8.1, we are requesting a review of any sections or parts of these regulations that are at least three years old to determine whether they are contrary to the public interest and to make any recommendations as provided under the Act.

- The following regulations under 28 Pa. Code (relating to Health and Safety):
  - Ch. 5 (relating to clinical laboratories).
  - Ch. 30 (relating to blood banks).
  - Ch. 51 (relating to general information).
  - Ch. 53 (relating to photo identification badges).

Independent Regulatory Review Commission

Page 2

September 21, 2022

- Subpart B (relating to general and special hospitals). This subpart encompasses Chapters 101 through 158.
- Subpart F (relating to ambulatory surgical facilities). This subpart encompasses Chapters 551-573.
- The following regulations under 55 Pa. Code (relating to Human Services):
  - Chapter 1245 (relating to ambulance transportation).
  - Chapter 1249 (relating to home health agency services).

If you have any questions or if I can be of further assistance, please do not hesitate to contact my office.

Sincerely,



Kathy L. Rapp, Chair  
House Health Committee

cc: Members of the House Health Committee

**ROB KAUFFMAN, MEMBER  
89<sup>TH</sup> LEGISLATIVE DISTRICT**



**House of Representatives**  
Commonwealth of Pennsylvania  
Harrisburg

**COMMITTEES**

**MAJORITY CHAIRMAN,  
JUDICIARY COMMITTEE**

**CONSUMER AFFAIRS**

**RULES**

September 13, 2022

**RECEIVED**

**SEP 26 2022**

**Independent Regulatory  
Review Commission**

Chairman Geroge D. Bedwick  
Vice Chairman John F. Mizner, Esq.  
Commissioner John J. Soroko, Esq.  
Commissioner Murray Ufberg, Esq.  
Commissioner Dennis A. Watson, Esq.  
Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, PA 17101

Dear Commissioners,

I write as chairman of and on behalf of the Judiciary Committee of the Pennsylvania House of Representatives, to request, pursuant to Section 8.1 of the Regulatory Review Act, that IRRC review the following list of regulations that have been in effect for at least three years. With the review of these regulations, the committee believes that IRRC may find outdated regulations that no longer pertain to current statute or practices:

- No. 2765, Commission on Crime and Delinquency, 35-31: Crime Victims Compensation
- No. 2428, Commission on Crime and Delinquency, 35-29: Crime Victims Compensation
- No. 2590, Department of Corrections, 19-9: State Intermediate Punishment
- No. 2544, Department of Corrections, 19-7: Correctional Institutions
- No. 2403, Department of Corrections, 19-6: Administration, State Correctional Facilities and Release and Prerelease Programs
- No. 2196, Department of Corrections, 19-5: Administration and State Correctional Institutions and Facilities
- No. 2011, Department of Corrections, 19-4: County Correctional Institutions
- No. 2010, Department of Corrections, 19-3: Motivational Boot Camps

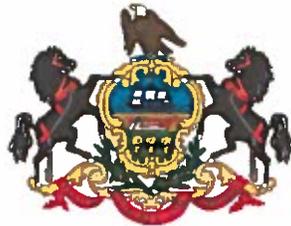
The committee respectfully requests that IRRC examine the regulations in hopes that unnecessary regulations that are out of date, no longer have impact on the Commonwealth, or are no longer in the best interest of the public are removed. We also request IRRC engage the regulated community of each regulation when reviewing these regulations.

Best regards,

A handwritten signature in black ink that reads "Rob Kauffman".

Rob Kauffman, Majority Chairman  
House Judiciary Committee

**JIM COX**, MEMBER  
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COMMITTEES  
LABOR & INDUSTRY, CHAIR  
HEALTH  
REPUBLICAN POLICY  
  
APPOINTMENTS  
CAPITOL PRESERVATION  
COMMITTEE

**HOUSE OF REPRESENTATIVES**  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

September 16, 2022

Chairman Geroge D. Bedwick  
Vice Chairman John F. Mizner, Esq.  
Commissioner John J. Soroko, Esq.  
Commissioner Murray Ufberg, Esq.  
Commissioner Dennis A. Watson, Esq.  
Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, PA 17101

**RECEIVED**

SEP 20 2022

**Independent Regulatory  
Review Commission**

Dear Commissioners,

The House Labor and Industry Committee directed me to advise that, in accordance with Section 8.1 of the Regulatory Review Act, the Committee is requesting review of the regulations listed in this letter that have been in effect for at least 3 years. With the review of these regulations, we strongly believe that IRRC will find outdated regulations that no longer pertain to statute or practices.

The committee requested the review of the regulations on September 14, 2022, by a vote of 25-0.

The committee hereby requests priority review of the regulations listed in the three groups below.

1. Department of Labor and Industry regulations include a number of provisions from antiquated statutes or statutes that have been fully or partially repealed. It is not clear to what extent these regulations are enforced or, in some cases, whether they are even valid. IRRC should review these regulations to determine whether they are in the public interest and should make recommendations accordingly for repeal or modernization of the regulations, as appropriate.

- Pa Code 34, Chapter 5 (Blasting, Demolition, Fireworks and Explosives) – last amended 1969
  - NOTE: Regulations issued under the Explosives Use and Regulation Law (Act 362 of 1957) - Section 2 of Reorganization Plan No.8 of 1981 provided that all the functions, powers and duties of the Department of Labor and Industry as set forth in Act 362 are transferred to the Department of Environmental Resources.
- PA Code 34, Chapter 7 (Elevators, Lifts, Escalators, Dumbwaiters, Hoists and Tramways) -- last amended 1980
  - NOTE: Newer regulations (Pa Code 34, Chapter 405) under the PA Construction Code Act provide for department oversight of elevators and lifting devices.

- PA Code 34, Chapter 13 (Propane and Liquefied Petroleum Gas), Subchapter B (Lead Corroding and Oxidizing) – Last Amended 1977
- PA Code 34, Chapter 23 (Laundering and Dyeing Establishments), Subchapter B (Dry Cleaning and Dyeing) – last amended 1968
  - NOTE: Regulations issued under the Dry Cleaning and Dyeing Law (Act 402 of 1949) - Act 402 was repealed by Act 214 of 1990, and Act 214 was repealed by Act 45 of 1999.
- PA Code 34, Chapter 31 (Migrant Labor), Subchapter C (Seasonal Farm Labor) – last amended 1979
  - NOTE: PA Code cites Act 452 of 1929 as the authority for this regulation, but that appears to be a mistake.
  - NOTE: Regulations apparently issued under the Seasonal Farm Labor Act (Act 93 of 1978) - Much of Act 93 has been repealed by subsequent acts.
- PA Code 34, Chapter 38 (Building Energy Conservation Standards) – last amended 1982
  - NOTE: Regulations issued under the Building Energy Conservation Act (Act 222 of 1980) – Act 222 was repealed by Act 45 of 1999.
- PA Code 34, Chapter 47 (Miscellaneous Provisions), Subchapter D (Facilities for Handicapped) – Last amended 1971 and Chapter 60 (Universal Accessibility Standards) – Last amended 1994
  - NOTE: Regulations issued under an Act Requiring Buildings be Constructed to be Usable by Physically Handicapped (Act 235 of 1965) - Act 235 was repealed by Act 45 of 1999.
- Regulations issued under the General Safety Law (Act 174 of 1937), including PA Code 34:
  - Chapter 6 (Construction and Repairs) – Last Amended 1973
  - Chapter 13 (Propane and Liquefied Petroleum Gas), Subchapter C (Manufacture of Nitro and Amino Compounds) – Last Amended 1968
  - Chapter 19 (Industries- Food and Drink) – Last Amended 1968
  - Chapter 21 (Ladders) – Last Amended 1970
  - Chapter 23 (Laundering and Dyeing Establishments), Subchapter A (Laundries) – Last Amended 1968
  - Chapter 25 (Lifting and Carrying Apparatus) – Last Amended 1969
  - Chapter 27 (Lighting) – Last Amended 1978
  - Chapter 29 (Mechanical Apparatus – Miscellaneous):
    - Subchapter A (Power Foot and Hand Cold Metal Presses) – Last Amended 1968
    - Subchapter B (Powder Actuated Tools) – Last Amended – 1970
    - Subchapter C (Mechanical Power Transmission Apparatus) – Last Amended 1968
    - Subchapter D (Stationary Engines) – Last Amended 1968
    - Subchapter E (Machine Tools) – Last Amended 1967
  - Chapter 31 (Migrant Labor), Subchapter A (Crew Leaders) and Subchapter B (Transportation of Workers) – Last Amended 1966
  - Chapter 35 (Paints) – Last Amended 1979

- Chapter 39 (Safety Standards – General), Subchapter A (Safe Practices) and Subchapter B (Head and Eye Protection) – Last Amended 1970
- Chapter 41 (Sanitation), Subchapter A (Industrial Sanitation) – Last Amended 1970
- Chapter 43 (Tunnel Construction and Compressed Air Work) – Last Amended 1977
- Chapter 45 (Woodworking and Related Occupations) – Last Amended 1968
- Chapter 47 (Miscellaneous Provisions):
  - Subchapter B (Cereal Mills, Malthouses and Grain Elevators) – Last Amended 1968
  - Subchapter C (Dry Color Industry) – Last Amended 1977
  - Subchapter E (Foundries) – Last Amended 1967
  - Subchapter F (Printing and Related Industries) – Last Amended 1977
  - Subchapter G (Railings, Toeboards, Open-sided Floors, Platforms and Runways) – Last Amended 1968
  - Subchapter I (Textile Industries) – Last Amended 1968
  - Subchapter J (Window Cleaning) – Last Amended 1967

2. In some instances, the PA Code does not cite the regulatory authority for a specific regulation. If the statutory authority for a particular regulation no longer exists, or cannot be ascertained, the regulation should be reviewed, and IRRC should make recommendations for appropriate repeals if regulations lack statutory authority.

- PA Code 34, Chapter 29 (Mechanical Apparatus – Miscellaneous), Subchapter F (Abrasive Wheels)
  - NOTE: The regulation adopts national standards from 1970 by reference.
- PA Code 34, Chapter 41 (Sanitation), Subchapter B (Railroad Sanitation) – Last Amended 1968
- PA Code 34, Chapter 47 (Miscellaneous Provisions), Subchapter K (Safety Glazing Material) – Last Amended 1979

3. Through our work as legislators, we occasionally become aware of problems or complaints with longstanding regulations. As a committee, we take no position at this time on what each regulation should specifically provide, but there are several regulations that should be reviewed by IRRC to determine whether they are in the public interest – and recommendations made for whether the regulations should be modernized or amended.

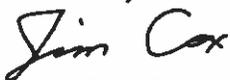
- Pa Code 34, Chapter 83 (Welfare of Apprentices) – Last Amended 1979 – NOTES:
  - Regulations issued under the Apprenticeship and Training Act (Act 304 of 1961).
  - Federal law and regulations have changed multiple times – and the types of occupations open to apprentices has evolved greatly since these regs were promulgated.
  - Trade unions have suggested there should be clearer, more robust standards for the curricula of apprenticeship programs, and that dormant programs (or those that fail to graduate apprentices) should be subject to corrective action or decertification.

- Non-joint construction apprenticeship programs have suggested that the ratio requirements for non-joint programs creates a disparity and an uneven playing field with joint programs. Likewise, apprenticeship programs for occupations inside and outside the construction industry have suggested that ratio requirements, in some cases, unnecessarily stymie the training of needed workers.
- PA Code 34, Chapter 101 (General Requirements), Subchapter E (Telephone hearings) – Last amended 1997 - NOTES:
  - Section 505 of the Unemployment Compensation (UC) Law provides (as amended by Act 6 of 2011): *“Rules established by the board shall permit either party to a hearing to testify via telephone, without regard to distance of hearing location from either party.”*
  - The regulation still refers to distance from the hearing location, and UC Board of Review has never promulgated updated rules to comply with Act 6.
- PA Code 34, Chapter 127 (Medical Cost Containment) – Last amended 1998 – NOTES:
  - Stakeholders have pointed to a number of provisions in this regulation that may not be consistent with the Workers’ Compensation Act, including:
    - Section 127.208 (Time for payment of medical bills)
    - Section 127.254 (Downcoding disputes)
    - Section 127.755 (Required notice of employe rights and duties)
  - Additionally, stakeholders have suggested that some provisions of the regulation are confusing, unnecessary, or cumbersome, including provisions that:
    - May require unnecessary and duplicative work and expense by insurers.
    - Unnecessarily limit the availability of relevant information to Utilization Review Organizations (URO).
    - Contain contradictory language within the same section of the regulation.
    - Place additional burdens on UROs to make determinations about timeliness.
- PA Code 34, Chapter 131 (Special Rules of Administrative Practices and Procedure Before Workers’ Compensation Judges) – Last Amended 2014 – NOTES:
  - Stakeholders have suggested that the timeframes for a number of the required filings and responses could be optimized to reflect the realities of the department’s WCAIS system, investigations, and the litigation process.
  - Stakeholders have also suggested that the language of the regulation does not reflect a recent state Supreme Court decision in *Lorino v. WCAB*.
- PA Code 34, Chapter 401 (Uniform Construction Code Training and Certification of Code Administrators) – NOTES:
  - Although Section 401.1 (Definitions) has been amended numerous times – including within the last three years – to reflect technical updates and conformity to the latest codes adopted under the law, the remainder of the regulation has not been amended since at least 2006.
  - Members of the public and some in the construction industry have suggested that the grounds for corrective action against a code administrator or third-party agency should be changed to address issues like non-responsiveness, disparate enforcement of the code provisions, or extremely unprofessional behavior.

- Code administrators have suggested authorizing a class of certification for trainees to provide the on-the-job training and experience needed to fill vacancies and ensure that new code administrators have the requisite skill set to enforce the codes.
- Likewise, code administrators have suggested that there is no ability to place a certification in escrow (or in a dormant status) if the certificate holder steps away from the field temporarily – and then reactivate the certificate when the holder wants to rejoin the field.

We respectfully request that IRRC examine the regulations in hopes that unnecessary regulations that are out of date, no longer have impact on the Commonwealth, or are no longer in the best interest of the public are removed or modernized, as appropriate. We would also request IRRC engage the regulated community of each regulation when reviewing these regulations.

Sincerely,



Jim Cox, Chairman  
Labor and Industry Committee  
PA House of Representatives

CC: The Honorable Jennifer Berrier, Secretary  
Representative Gerald Mullery, Democratic Chairman  
House Labor and Industry Committee

HONORABLE  
**SETH M. GROVE**  
196<sup>TH</sup> LEGISLATIVE DISTRICT

**HARRISBURG OFFICE**  
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Website: RepGrove.com  
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Facebook.com/RepSethGrove



*House of Representatives*  
Commonwealth of Pennsylvania

September 12, 2022

**CHAIR**  
STATE GOVERNMENT COMMITTEE

**COMMITTEES**  
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Commissioner Dennis A. Watson, Esq.

Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, PA 17101

Dear Commissioners:

On September 12, 2022, the members of the House State Government Committee considered and adopted this letter as a request for IRRC to conduct a review of certain regulations to which this committee has designated oversight and that have been in effect for at least three years. According to Section 8.1 of the Regulatory Review Act, "If a committee of the Senate or the House of Representatives requests a review of an existing regulation, the commission shall perform the review and shall assign it high priority."

The request for review is based in some respects on form/technical, and in others substance.

With respect to those relating to form, most of these regulations have been repealed and we question whether their continued maintenance is necessary. These include:

- Department of General Services #8-2 (IRRC# 2303): State Art Commission
- Department of General Services #8-3 (IRRC# 2304): General Conditions of Contract
- Department of General Services #8-4 (IRRC# 2305): Instructions to Bidders
- Department of State #16-14 (IRRC# 1837): Charitable Organizations

**RECEIVED**

SEP 19 2022

Independent Regulatory  
Review Commission

- Department of State #16-16 (IRRC# 1906): Nonprofit Corporations
- Department of General Services #8-11 (IRRC# 2574): Distribution of Federally Donated Foods to Needy Households
- Department of General Services #8-21 (IRRC# 3191): Committee on Construction Contract Documents
- No. 3192 Department of General Services #8-22 (IRRC#3192): Selections Committee
- Department of General Services #8-23 (IRRC#3193): Emergency Construction Repairs
- Department of General Services #8-25 (IRRC#3194): Methods of Awarding Contracts

With respect to those relating to substance, we request review for the following reasons:

- Department of State #16-22 Campaign Finance Forms (IRRC# 2100)-this regulation requires the use of diskettes to submit campaign filers, and diskette usage may be out of date.
- Department of State #16-33 (IRRC#2407): Fees for Notary Services-given that this regulation was enacted seventeen years ago, it would not account for the implementation and impact of the enactment of remote notarization in Pennsylvania (Act 97 of 2020).
- Joint Committee on Documents #53-7 (IRRC#1532): Diskette Requirements-requires submission of a diskette, and diskette usage may be out of date.
- Joint Committee on Documents #53-9 (IRRC#2861) Preliminary Provisions; Definitions-review to ensure alignment with recently enacted Act 82 of 2021 (HB1452).
- IRRC#70-9 General Revisions (IRRC#3125)- this regulation updated IRRC's regulations (1 Pa Code Chapters 301- 315) to clarify definitions and procedures for delivery of regulations and to ensure consistency with the Regulatory Review Act. As this review was enacted almost 5 years ago, it would appear there are additional inconsistencies. For example, Section 8.1 of the Regulatory Review Act states: "The commission, on its motion or at the request of any person or member of the General Assembly, may review any existing regulation which has been in effect for at least three years. If a committee of the Senate or the House of Representatives requests a review of an existing regulation, the commission shall perform the review and shall assign it high priority." Section 315.1(a) of IRRC's regulations states: "The Commission, on its own motion or at the request of any person or member of the General Assembly, may review an existing regulation which has been in effect for at least 3 years, under section 8.1 of the act (71 P.S. § 745.8a). If a committee of the Senate or House of Representatives requests the review, the Commission will assign it high priority." The phrase in Section 8.1 of the Act requiring the Commission's performance of the review has been removed from Section 315.1 of the regulation. We request additional review of IRRC's regulations in order to determine whether further updates and revisions are necessary. <sup>1</sup>

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<sup>1</sup> It is our understanding that pursuant to Section 11 of the Regulatory Review Act, the Joint Committee on Documents conducts the review of IRRC's regulations.

In addition to the above requested review, we also request additional information regarding certain regulations that have been in effect for at least 3 years but do not appear to have any corresponding information or documentation available on IRRC's website. Those regulations include:

- Department of State #16-1 (IRRC#49): Names, Trademarks and Service Marks
- Department of State #16-2 (IRRC#116): Notary Public Fee Schedule
- Department of State #16-4 (IRRC#877): Uniform Commercial Code
- Department of State #16-8 (IRRC#1245): General Revisions
- Joint Committee on Documents #53-1 (IRRC#102): Effective Date of Regulations
- Joint Committee on Documents #53-3 (IRRC#439): Statement of Policy
- Joint Committee on Documents #53-4 (IRRC#660): Distribution of Bound Volumes of Official Text
- Joint Committee on Documents #53-4 (IRRC#1213): Bulletin and Related Documents Charges
- Joint Committee on Documents #53-6 (IRRC#1510): Department of Banking: Automatic subscriptions
- Joint Committee on Documents #53-7 (IRRC#1532): Diskette Requirements<sup>2</sup>

Based on the above reasons, by a vote of 25 to 0, the Committee adopted this letter on September 12, 2022, to which I signed as Chairman of the Committee and am formally submitting to IRRC.

Sincerely,



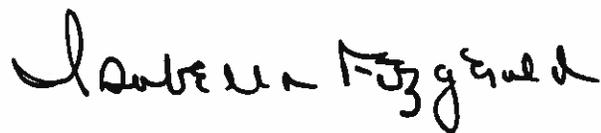
Seth Grove  
**Majority Chairman**  
House State Government Committee



Scott Conklin  
**Minority Chairman**  
House State Government Committee



**Russ Diamond**  
Representative, 102<sup>nd</sup> Legislative District



**Isabella Fitzgerald**  
Representative, 203<sup>rd</sup> Legislative District

---

<sup>2</sup> Please note that we include this regulation in both the section relating to substance as well as the regulations without documents. As we see it in a few of the regulations we reviewed, we question what other regulations still include them and the overall issue of whether diskettes are still in fact used.



**Matt Dowling**  
Representative, 51<sup>st</sup> Legislative District



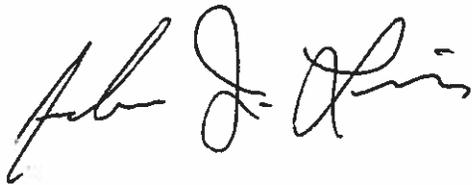
**Kristine Howard**  
Representative, 167<sup>th</sup> Legislative District



**Dawn Keefe**  
Representative, 92<sup>nd</sup> Legislative District



**Malcolm Kenyatta**  
Representative, 181<sup>st</sup> Legislative District



**Andrew Lewis**  
Representative, 105<sup>th</sup> Legislative District



**Maureen Madden**  
Representative, 115<sup>th</sup> Legislative District



**Ryan Mackenzie**  
Representative, 134<sup>th</sup> Legislative District



**Benjamin Sanchez**  
Representative, 153<sup>rd</sup> Legislative District



**Brett Miller**  
Representative, 41<sup>st</sup> Legislative District



**Brian Sims**  
Representative, 182<sup>nd</sup> Legislative District



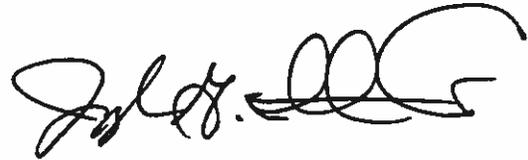
**Eric Nelson**  
Representative, 57<sup>th</sup> Legislative District



**Jared Solomon**  
Representative, 202<sup>nd</sup> Legislative District



**Jason Ortitay**  
Representative, 46<sup>th</sup> Legislative District



**Joe Webster**  
Representative, 150<sup>th</sup> Legislative District



**Clint Owlett**  
Representative, 68<sup>th</sup> Legislative District



**Regina Young**  
Representative, 185<sup>th</sup> Legislative District



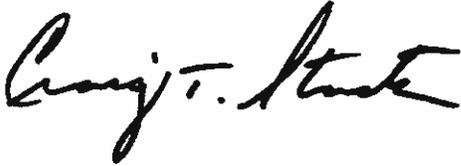
**Frank Ryan**  
Representative, 101<sup>st</sup> Legislative District



**Paul Schemel**  
Representative, 90<sup>th</sup> Legislative District



**Louis Schmitt**  
Representative, 79<sup>th</sup> Legislative District



**Craig Staats**  
Representative, 145<sup>th</sup> Legislative District



**Jeff Wheeland**  
Representative, 83<sup>rd</sup> Legislative District

Cc: David Sumner, Executive Director, IRRC

# Correspondence

GEORGE D. BEDWICK, CHAIRMAN  
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MURRAY UFBERG, ESQ.  
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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

December 14, 2023

Via Electronic and First Class Mail

The Honorable Jason Kavulich  
Secretary  
Pennsylvania Department of Aging  
555 Walnut Street, 5th Floor  
Harrisburg, PA 17101-1919

Re: Review of Existing Regulations Pursuant to a Request of the Pennsylvania House of Representatives Aging and Older Adult Services Committee

Dear Secretary Kavulich:

I am writing to request your assistance in a review of existing regulations being conducted by the Independent Regulatory Review Commission pursuant to the request of standing committees of the Pennsylvania House of Representatives ("Pennsylvania House"). Beginning on September 12, 2022, six standing committees of the Pennsylvania House submitted requests to IRRC asking that we review previously promulgated regulations from various agencies. The enclosed letter from the Pennsylvania House Aging and Older Adult Services Committee, dated September 14, 2022, cites seven rulemakings of the Pennsylvania Department of Aging ("Department") covering four specific Chapters of regulations:

- 6 Pa. Code Chapter 15 (Protective Services for Older Adults) which was last amended in 2002;
- 6 Pa Code Chapter 20 (Family Caregiver Support Program) which was established in 1992 and has not been amended since adoption;
- 6 Pa. Code Chapter 21 (Protective Services for Older Adults) which has not been amended since it was established in 1989; and
- 6 Pa Code Chapter 22 (Pharmaceutical Assistance Contract Program for the Elderly "PACE") last amended in 1990.

Under the Section 8.1 of the Regulatory Review Act, IRRC may review any existing regulation which has been in effect for at least three years. If, upon completion of its review, IRRC finds that the regulation is not in the public interest under the criteria outlined in Section 5.2 of the Act, we

may submit recommendations to the agency recommending changes to the regulation or to the General Assembly recommending statutory change. 71 P.S. § 745.8a.

### Subsequent Statutory Changes

Each of the regulatory provisions listed above have been in place and unchanged for decades, with all but one of the rulemakings listed by the Committee being adopted 31 years ago or more. Since that time, at least 17 Acts (“Omnibus Amendments”) were signed into law implicating the various regulations named by the Committee. It is possible that additional regulations, policies, or guidelines not listed above or cited by the Committee are also affected.

The Omnibus Amendments include: Act 56 of 2007; Act 112 of 2011; Act 20 of 2021; Act 169 of 1996; Act 13 of 1997; and at least twelve laws amending aspects of the PACE program. Those twelve laws are: Act 36 of 1991; Act 134 of 1996; Act 37 of 20023; Act 219 of 2004; Act 111 of 2006; Act 69 of 2008; Act 12 of 2014; Act 169 of 2016; Act 87 of 2018; Act 14 of 2020; Act 82 of 2020; and Act 94 of 2021. Additionally, the federal Older Americans Act of 1965 has been reauthorized repeatedly with amendments since the Department adopted its Chapter 21 regulations in 1990.

### IRRC’s Review Requests

In our preliminary review of the regulations listed above, we have determined that regulatory revisions are required to reflect cumulative changes contained in the Omnibus Amendments as well as current practices. Existing regulatory terms are out of date, caregiver support and reimbursement provisions do not reflect intervening statutory changes, and current requirements governing the care of older adults are not reflected in Department regulations.

The most recent Governor’s Regulatory Agenda published in the July 22, 2023 *Pennsylvania Bulletin* does not show any planned amendments to the Chapters which the Committee requested that IRRC review. Accordingly, we request any information that you can provide to assist in our determination of whether these rulemakings remain in the public interest including, but not limited to: any planned updates or amendments to these regulations pursuant to laws enacted subsequent to their promulgation; any recent or anticipated meetings or engagement with stakeholder groups or parties affected by these regulations to solicit input and feedback on the existing provisions and possible revisions; and any other materials or information you believe may assist us in this matter.

We note that it has been many years since the Department has updated these regulations and we therefore lack timely and necessary information to inform our review so we kindly request that you clearly and fully explain your position and plans on each regulation listed by the Committee. While it has been suggested that there is no urgency to update regulations to

conform with changes to authorizing laws since regulated entities are required to abide by all statutory provisions, it is important that the Code reflect current requirements to guide and inform businesses, citizens, and the regulated community. Lastly, as your Department reviews each of these regulations and compiles information responsive to our requests, we encourage you to do so in coordination with any other affected agencies, such as the Department of Health, the Pennsylvania Department of Military and Veterans Affairs, as well as the regulated community and other stakeholders to ensure that all changes made by the statutory changes are properly implemented.

While we are flexible on the timeframe to respond, we would appreciate receiving any information you wish to share on or before March 1, 2024. If you have any questions regarding this matter, please feel free to contact me. Thank you for any assistance that you can provide on this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Sumner", written in a cursive style.

David Sumner  
Executive Director

Enclosure



COMMONWEALTH OF PENNSYLVANIA  
AGING

May 31, 2024

David Summer  
Executive Director  
Independent Regulatory Review Commission  
[dsummer@irre.state.pa.us](mailto:dsummer@irre.state.pa.us)  
Sent via Electronic Correspondence

**Re: Pennsylvania Department of Aging Review of Existing  
Regulations**

Dear Executive Director Summer:

This letter is in response to your December 14, 2023, inquiry requesting assistance regarding your review of the following regulatory chapters under section 8.1 of the Regulatory Review Act to determine whether these existing regulatory chapters are in the public interest:

1. 6 Pa Code Chapter 15 (Protective Services)
2. 6 Pa Code Chapter 20 (Family Caregiver Support Program)
3. 6 Pa Code Chapter 21 (Domiciliary Care)
4. 6 Pa Code Chapter 22 (Pharmaceutical Assistance Contract Program for the Elderly)

As detailed below, the Pennsylvania Department of Aging (Department) has conducted a review of the above regulations listed above and is providing feedback on areas that may be fitting for amendment, modification or repeal.

**1. Protective Services Regulations (6 Pa Code Chapter 15):**

The Protective Services regulations are currently utilized and relevant to the daily operation of providing protective services to older adults who need them. The statutory authority for these regulations is the Older Adult Protective Services of Act (OAPSA)(35 PS §§ 10225.101- 10225.5102). OAPSA was last amended on November 6, 1987, and is projected to be introduced in the current and or next session by the General Assembly.

The Department is currently working with the Department of Human Services (DHS) and other state agencies in recommending amendments to OAPSA. The Department and DHS operate protective services programs where DHS provides protective services to adults aged 18-59 and the Department provides protective services to older adults aged 60 and over. Based on the similarities of the programs identified by the Department and DHS, the agencies are working together to ensure the amended OAPSA statute is in alignment with DHS's Adult Protective Services Act (APSA) where possible. Additionally, the Department will be soliciting feedback from essential stakeholders regarding the proposed amendments to OAPSA.

As previously stated, the Protective Services regulations are relevant, remain in effect and are still in line with the statutory authority set forth in OAPSA. However, the Department understands that OAPSA may be amended in the very near future. Such updates may impact the Protective Services regulations and the Department will review, revise, or update the regulations to align with the amended OAPSA.

The Department recommends that Pa Code 6 Chapter 15 Protective Services regulations currently remain as written and be updated when OAPSA is amended.

## **2. 6 Pa Code Chapter 20 (Family Caregiver Support Program)**

The Department has reviewed the Family Caregiver Support Program regulations (6 Pa Code Chapter 20) to determine their ongoing validity. The underlying statutory authority for these regulations (62 P.S. §§ 3061-3068) has been updated with Act 20 of 2021. In June 2021, the Pennsylvania Caregiver Support Act (Act 20 of 2021) was signed into law and updated state statutory requirements for the Caregiver Support Program (CSP) to provide greater flexibility for the administration of the program and improve its alignment with the Older Americans Act (OAA).

After a comprehensive review, the Department believes there are several places where the regulations may be revised, modified, or eliminated to align with Act 20 of 2021.

The Department recommends modifications to the following Sections of 6 Pa Code Chapter 20 Sections, 20.2 (Definitions), 20.12 (Administrative Functions), 20.21 (Eligibility), 20.22 (Conditions of Participation), 20.23 (Assessment and Care Management), 20.34 (Caregiver Education and Training), 20.41 (General Reimbursement), 20.43 (Home Modifications) and 20.62 (Waivers).

The Department recommends the Family Caregiver Support regulations be amended.

## **3. 6 Pa Code Chapter 20 (Family Caregiver Support Program)**

The Department has reviewed the Domiciliary Care Services For Adults regulations (6 Pa Code Chapter 21) to determine their ongoing validity, and in several places believes specific regulations may be revised, modified, or eliminated.

After a comprehensive review, the Department believes there are several places where the regulations may be revised, modified, or eliminated. The Department recommends modifications to the following Sections of 6 Pa Code Chapter 21 Sections, 21.2 (Definitions), 21.23 (Application process for domiciliary care services), 21.24 (Redetermination of eligibility), 21.28 (Provider application and home certification), 21.55 (AAA placement), 21.55 (AAA placement activities), 21.61 (Domiciliary care service's relationship to service management), 21.79 (Fire and safety activities), and 21.82 (Other provisions.)

The Department recommends the Domiciliary Care Services For Adults regulations be amended.

4. **6 Pa Code Chapter 22 (Pharmaceutical Assistance Contract Program-(PACE)) for the Elderly.**

The Pharmaceutical Assistance Contract Program for the Elderly (PACE) regulations are currently utilized and relevant. The regulations include the following chapters:

- 22.1-22.2-General Provisions
- 22.11-General Payment Principles
- 22.21-22.26-Claimant Eligibility
- 22.31-22.37-Application Process
- 22.41-22.46 Eligibility Redetermination Process
- 22.51-22.52-Continuing Claimant Responsibilities
- 22.61-22.63-Provider Participation
- 22.71-22.74-Misutilization and Abuse Of Program Benefits
- 22.81-22.86-Provider Misutilization and Abuse
- 22.91-22.95-Claimant Hearing And Appeals
- 22.101-11.104-Provider Hearings And Appeals
- 22.111- Other Administrative Provisions

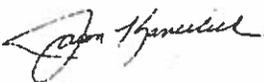
The PACE program offers a low-cost prescription program for income eligible older adults. The current PACE regulations (6 Pa Code Chapter 22) remain relevant and continue to serve the administrative needs including applicant and provider enrollment, claims adjudication and appeals. Further the underlying statutory authority for the regulations continues, with the regulations maintaining consistency with the authorizing legislation.

The current PACE regulations retain their ongoing applicability for PACE operations, are not contrary to the public interest and continue to be relevant for the public and administrative operations. As such, the Department recommends these regulations remain as written without any amendments or revisions at this time.

In closing, the Department is committed to continuing to update regulations under its purview and looks forward to updating additional regulations going forward based on both the criteria set forth in the House Request and other regulatory needs. The Department welcomes additional feedback from the IRRC as it builds out its next regulatory agenda and identifies the highest-priority areas for rulemaking. The Department shares the IRRC's commitment to ensuring that robust stakeholder input, from both regulated communities and sister agencies, informs the Department's regulatory process.

If you have any questions regarding this matter, please feel free to contact me or our Department's Legal Office. Thank you for your assistance on this important initiative.

Sincerely,



Jason Kavulich  
Secretary

Cc: Steven B. Horner, Deputy Secretary  
Althea Bennett, Chief Council  
Glenda Ebersole, Policy Director  
Debra Hargett-Robinson, Deputy Chief Council

GEORGE D. BEDWICK, CHAIRMAN  
JOHN F. MIZNER, ESQ., VICE-CHAIRMAN  
JOHN J. SOROKO, ESQ.  
MURRAY UFBERG, ESQ.  
DENNIS A. WATSON, ESQ.  
DAVID SUMNER, EXECUTIVE DIRECTOR  
LESLIE LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417  
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irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

## INDEPENDENT REGULATORY REVIEW COMMISSION

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

August 24, 2023

Via Electronic and First Class Mail

The Honorable Valerie A. Arkoosh, MD, MPH  
Secretary  
Pennsylvania Department of Human Services  
P.O. Box 2675  
Harrisburg, PA 17105

Re: Review of Existing Regulations Pursuant to a Request of the Pennsylvania House of Representatives Health Committee and House Children and Youth Committee

Dear Secretary Arkoosh:

I am writing to request your assistance in a review of existing regulations being conducted by the Independent Regulatory Review Commission pursuant to the request of standing committees of the Pennsylvania House of Representatives ("Pennsylvania House"). Beginning last fall, six standing committees of the Pennsylvania House submitted requests to IRRC asking that we review previously promulgated regulations from various agencies. The enclosed letters from the Pennsylvania House Health and House Children and Youth Committees include three specific Chapters of regulations (55 *Pa Code* Chapters 1245, 1249, and 3700) of the Pennsylvania Department of Human Services ("Department").

Under Section 8.1 of the Regulatory Review Act ("Act"), IRRC may review any existing regulation which has been in effect for at least three years. If, upon completion of its review, IRRC finds that the regulation is not in the public interest under the criteria outlined in Section 5.2 of the Act, we may submit recommendations to the agency recommending changes to the regulation, or to the General Assembly recommending statutory change. 71 P.S. § 745.8a.

### Background on these Regulations

Our review entails the following Chapters:

- 55 *Pa Code* Chapter 1245 (relating to Ambulance Transportation) which was last revised in 1995;
- 55 *Pa Code* Chapters 1101 (General Provisions) and 1150 (relating to Medicaid Assistance Program Payment policies) which are interrelated to our review of Chapter 1245;

Secretary Arkoosh  
Page 2  
August 24, 2023

- 55 Pa Code Chapter 1249 (relating to Home Health Agency Services) which was last revised in 2007; and
- 55 Pa Code Chapter 3700.

Additionally, we have received a separate, unrelated request from the Rehabilitation and Community Providers Association to review Department final regulation #14-546 (Intensive Behavioral Health Services). That request is enclosed. By law, we are required to give priority to legislative requests to review existing regulations so we must first address the regulations listed above, together with dozens of regulations listed by other standing Committees of the Pennsylvania House, before considering #14-546. However, we would appreciate if your agency would begin its preliminary review of this regulation, along with the provisions of 55 Pa Code Chapters 1155 and 5240, with an eye toward providing information to aid in our review.

#### Statutory Changes

At least four Acts were signed into law (“Omnibus Amendments”) affecting the regulations cited by the House Committees. It is possible that additional regulations, policies, or guidelines of the Department not listed above are also affected by these or other enactments.

Act 37 of 2009 was signed into law on August 18, 2009 and amended the Commonwealth’s Health and Safety laws (35 PA.C.S. Part VI) to create a new Chapter titled, “Emergency Medical Services System.” Act 142 of 2016 also amended Title 35 of the Pennsylvania Consolidated Statutes and was signed into law on November 3, 2016. Act 54 of 2019 also amended Title 35 of the Pennsylvania Consolidated Statutes and was signed into law on July 2, 2019. Act 22 of 2022, signed into law on October 28, 2022, amended the Human Services Code of Title 62 of the Pennsylvania Statutes and abrogated portions of Title 55 of the *Pennsylvania Code*.

#### IRRC’s Review Requests

In our preliminary review of the provisions listed above, we have determined that regulatory changes may be required by, among other things, the Omnibus Amendments that collectively amended the Health and Safety Code and Human Services Code. We note that it has been more than 15 years since the Department has promulgated any regulations on certain subchapters. Accordingly, we request any information that you can provide to assist in our determination of whether these provisions remain in the public interest including, but not limited to: any planned updates or amendments to these regulations pursuant to the Omnibus Amendments or other laws; any recent or anticipated meetings or engagement with stakeholder groups or parties affected by these regulations to solicit input and feedback on the existing provisions and possible revisions; and any other materials or information you believe may assist us in this matter. Lastly, as your Department reviews each of these regulations and compiles information responsive to our requests, we encourage you to do so in coordination with any other affected agencies, such as the Department of Health, as well as the regulated community and other stakeholders to ensure that all changes made by the Omnibus Amendments are properly implemented.

Secretary Arkoosh  
Page 3  
August 24, 2023

While we are flexible on the timeframe to respond, we would appreciate receiving any information you intend to share on or before **October 13, 2023**. Information may be submitted to the mailing address listed above or by email to: [research@irrc.state.pa.us](mailto:research@irrc.state.pa.us).

If you have any questions regarding this matter, please feel free to contact me. Thank you for any assistance that you can provide on this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Sumner", with a stylized flourish at the end.

David Sumner  
Executive Director

Enclosures

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HUMAN SERVICES

December 7, 2023

Mr. David Sumner, Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17101

Dear Executive Director Sumner:

This letter is in response to your August 24<sup>th</sup> inquiry requesting assistance regarding your review of the following regulatory chapters under section 8.1 of the Regulatory Review Act to determine whether these existing regulatory chapters are in the public interest:

- 55 Pa. Code Chapter 1245 (relating to ambulance transportation)
- 55 Pa. Code Chapter 1249 (relating to home health agency services)
- 55 Pa. Code Chapter 3700 (relating to foster family care agency)
- 55 Pa. Code Chapters 1155 and 5240 (#14-546) (relating to intensive behavioral health services)

As provided in further detail below, these existing regulatory chapters remain in the public interest due to the need to protect public health and safety by providing minimum health and safety standards and ensuring minimum standards are met when public funds are being expended under the Medical Assistance (MA) program. Further, the underlying statutory authority for these regulations continues, with the regulations maintaining consistency with the authorizing legislation.

Chapter 1245 (relating to ambulance transportation)<sup>1</sup>, including the interrelated Chapters 1101 (relating to general provisions) and 1150 (relating to MA program payment policies)

The statutory authority for Chapter 1245 remains section 403 and 443.4 of the Human Services Code (62 P.S. §§ 403 and 443.4). This regulatory chapter provides the

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<sup>1</sup> Although noted in your letter, Act 2009-37 and Act 2016-142 (relating to emergency medical services system) do not relate to Medical Assistance payment provisions to ambulance providers. Instead, these acts direct numerous actions of the Department of Health related to regulated and coordinated emergency medical service systems. Similarly, Act 2019-54 does not relate to the department's regulations. Under Act 2019-54, the Department of Human Services distributes funds appropriated by the General Assembly to trauma centers or hospitals seeking Level III trauma accreditation.

OFFICE OF THE SECRETARY

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P.O. BOX 2675, HARRISBURG, PA 17105 | 717.787.2600/3600 FAX:717.772.2062 | www.dhs.pa.gov

structure for payment of ambulance transportation rendered to eligible recipients by ambulance providers enrolled in the Medical Assistance (MA) program. Consistent with other MA payment chapters, payment to enrolled providers is also subject to the general requirements under Chapter 1101 (relating to general provisions), the limitations established in Chapter 1150 (relating to MA Program payment policies) and the MA Program Fee Schedule. The procedure codes and fees on the MA Program Outpatient Fee Schedule for ambulance services, as of January 1, 2023, are available at: [Ambulance Fee Schedule \(pa.gov\)](#).<sup>2</sup>

#### Chapter 1249 (relating to home health agency services)

The statutory authority for Chapter 1249 remains section 403 and 443.2(2) of the Human Services Code (62 P.S. §§ 403 and 443.4). This chapter provides the participation requirements and payment conditions for home health services provided by home health agencies participating in the Medical Assistance Program. Specifically, the MA program pays for specific medically necessary home health services rendered to eligible recipients by providers enrolled in the MA Program. 55 Pa. Code § 1249.1 (relating to policy).

Payment to home health agencies is also subject to the general requirements under Chapter 1101 (relating to general provisions), the limitations established in Chapter 1150 (relating to MA Program payment policies) and the MA Program Fee Schedule. 55 Pa. Code §§ 1249.1, 1249.41, 1249.42 and 1249.51. The MA Program Outpatient Fee Schedule is available at: [humanservices.state.pa.us/outpatientfeeschedule](#).<sup>3</sup>

In addition, as noted in your inquiry, the requirements under Sections 1249.52(a)(1), 1249.53(a)(1) and 1249.54(a)(3) permitting only a physician to order services were removed under Act 2022-98 as part of a departmental legislative initiative. This is accurately reflected in the codified regulations at [§§ 1249.52](#), [1249.53](#) and [1249.54](#).

#### Chapter 3700 (relating to foster family care agency)

The statutory authority for Chapter 3700 remains Articles II, VII and IX of the Human Services Code (62 P. S. §§ 201—216, 701—774 and 901—922)<sup>4</sup>. This chapter provides the minimum requirements for a Foster Family Care Agency and foster parents. Specifically, the regulations authorize an agency to inspect and approve foster families and require the agency to implement family service plans, provide orientation and policies to foster families, and ensure that a child receive medical and dental care. In addition,

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<sup>2</sup> The Fee Schedule is consistent with the recent statutory requirements under 72 P.S. § 1730-F.1(5)(xi) (relating to Department of Human Services) (Act 2022-54).

<sup>3</sup> To access the codes for home health services, click on "I accept," and then select "05 – Home Health" from the provider dropdown list. In addition, the most recent MA Program Fee Schedule update is available at 53 Pa.B. 5673 (September 9, 2023), effective October 1, 2023.

<sup>4</sup> The specific authority for the department to promulgate regulations under these articles are sections 201(2), 703 and 921 of the Human Services Code (62 P.S. §§ 201(2), 703 and 921).

these regulations outline the requirements that an individual must meet to become an approved foster parent, such as training requirements, resident requirements, foster parent capability, safety requirements, and also provide the parameters for child discipline and punishment as a foster parent.

Although this chapter was not recently promulgated, it is still currently utilized and relevant given its general structure. Specifically, there is not a statutory provision that conflicts with or supersedes the provisions of this chapter. For example, although there have been various amendments to the Child Protective Services Law since the promulgation of this chapter, this chapter does not conflict with those legislative amendments since the chapter requires compliance with the Child Protective Services Law.<sup>5</sup> 55 Pa. Code § 3700.62 (relating to foster parent requirements).

Lastly, to the extent a requirement under the chapter may not be met, a waiver of the requirement may be requested and granted in instances where the objective of the requirement will be achieved in another way, there will be no adverse effect on the health, safety and rights of the children, and the waiver does not result in noncompliance with other federal and state requirements. 55 Pa. Code § 3700.5 (relating to waivers).

#### Chapters 1155 and 5240 (#14-546) (relating to intensive behavioral health services)

These chapters were promulgated four years ago, and the statutory authority remains section 201(2) of the Human Services Code (62 P.S. § 201(2)) and section 201(2) of the Mental Health and Intellectual Disability Act of 1966 (50 P.S. § 4201(2)). Chapter 1155 provides the provider participation and MA payment requirements for intensive behavioral health services; while Chapter 5240 provides the minimum requirements for an agency to provide an intensive behavioral health service. These chapters support children, youth and young adults with mental, emotional and behavioral health needs because they can continue to receive a wide array of services that meet their needs in their homes, schools and communities, including evidence-based therapy delivered through individual services, applied behavior analysis services and group services.

As noted in the document attached to your request, a provider association is requesting a reduction in various staff qualifications, training and supervision requirements and frequency of assessments under Chapter 5240. The department, however, asserts that these minimum qualifications and requirements are needed

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<sup>5</sup> For example, the Child Protective Services Law explicitly requires a foster parent, a prospective foster parent, and anyone in the home 18 years of age or older to submit a criminal history record report, a Childline report and a Federal Bureau of Investigation criminal history report. 23 Pa.C.S. § 6344(a)(2), (b) and (d). In addition, these individuals are also required to report certain arrests and convictions within 72 hours and report changes in household composition. 23 Pa.C.S. § 6344(4.1) and (5). As a self-executing statute, the Child Protective Services Law is mandatory in nature and does not require any further legislative action in order to become effective. See *Success Against All Odds v. DPW*, 700 A.2d 1340 (1997).

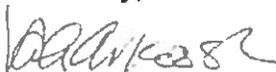
because they provide basic health and safety standards. For example, the requirement for a practicum for a clinical director ensures that the individual has clinical training. Similarly, the requirement for an initial assessment to be completed within 15 days of the initiation of group services is needed to timely place an individual who needs intensive behavioral health services in a group that matches their skills, abilities and needs. Likewise, supervision increases the quality of services.

As discussed in the final-form rulemaking, the department recently developed these minimum standards under Chapter 5240 after involvement with a diverse stakeholder group, which included providers, advocates, physicians, family members, county administrators, provider associations, behavioral health managed care organizations, the Office of Mental Health and Substance Abuse Services Mental Health Planning Council, the Pennsylvania Mental Health Consumers Association, the Pennsylvania Health Law Project, and Disability Rights Pennsylvania. 49 Pa.B. 6088 (October 19, 2019). Each of the major sections of the regulation was reviewed and discussed by members of the workgroup through a series of six telephone conference calls and webinars and two face-to-face meetings. Further, the workgroup was reconvened after the publication of the proposed regulation. The department considered and balanced these diverse interests when developing these regulations. In addition to responding to these same comments from the provider association during the promulgation of Chapter 5240, the department continues to work and meet with this provider association on a regular basis and provide technical assistance as needed.<sup>6</sup> The department is happy to report growth in the number of providers of these services since the inception of these regulations.

Lastly, similar to Chapter 3700, Chapter 5240 also permits the submission of a written request for a waiver of specific regulatory requirement under the chapter. 55 Pa. Code § 5240.111 (relating to waivers).

In closing, the department's regulatory chapters under your review continue to protect the public health, safety and welfare by providing payment to providers who deliver MA services, by providing the minimum requirements for becoming a foster family, and by providing the licensure and payment requirements for intensive behavioral health services. As such, these regulations are not contrary to the public interest. Representatives from the department are also available to discuss these regulatory chapters with you, as needed, and will provide the Commission with any assistance required to facilitate its review.

Sincerely,

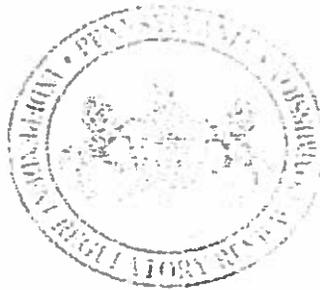


Valerie A. Arkoosh, MD, MPH  
Secretary of Human Services

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<sup>6</sup> As part of the implementation of this chapter, the Department has provided various resources and trainings. See [BHPProvider-IBHS \(pa.gov\)](https://www.dhs.pa.gov/BHPProvider-IBHS).

GEORGE D. BEDWICK, CHAIRMAN  
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INDEPENDENT REGULATORY REVIEW COMMISSION  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 6, 2023

Via Electronic and First Class Mail

The Honorable Debra L. Bogen  
Acting Secretary  
Pennsylvania Department of Health  
625 Forster Street  
6th Floor  
Harrisburg, PA 17120

Re: Review of Existing Regulations Pursuant to a Request of the Pennsylvania House of Representatives Health Committee

Dear Secretary Bogen:

I am writing to request your assistance in a review of existing regulations being conducted by the Independent Regulatory Review Commission pursuant to the request of standing committees of the Pennsylvania House of Representatives ("Pennsylvania House"). Beginning on September 12, 2022, six standing committees of the Pennsylvania House submitted requests to IRRC asking that we review previously promulgated regulations from various agencies. The enclosed letter from the Pennsylvania House Health Committee, dated September 21, 2022, includes specific Chapters of regulations of the Pennsylvania Department of Health ("Department"): 28 Pa Code Chapters 5, 30, 51, 53, 101-158, and 551-573.

Under the Section 8.1 of the Regulatory Review Act, IRRC may review any existing regulation which has been in effect for at least three years. If, upon completion of its review, IRRC finds that the regulation is not in the public interest under the criteria outlined in Section 5.2 of the Act, we may submit recommendations to the agency recommending changes to the regulation or to the General Assembly recommending statutory change. 71 P.S. § 745.8a.

**Background on these Regulations**

Our review entails the following Chapters:

- 28 Pa. Code Chapter 5 (relating to Clinical Laboratories) which was last amended in 1984.
- 28 Pa Code Part I, Chapter 30 (relating to Blood Banks) was established in 1977 and has not been amended.

- 28 Pa Code Part III, Chapter 51 (relating to General Information) was added in 1998 and has not been amended.
- 28 Pa Code Part III, Subpart A, Chapter 53 (relating to Photo Identification Badges) expired in 2012.
- 28 Pa Code Part IV, Subpart B, Chapters 101 to 158 (relating to General and Special Hospitals). Of these 32 chapters, 26 were last amended in the 1980s, three were last amended in the 1990s, and one chapter was last amended in 2008.
- 28 Pa Code Part IV, Chapter F, Chapters 551-573 (relating to Ambulatory Surgical Facilities). All 11 chapters were last amended in 1999.

### Statutory Mandates and Changes

Section 1 of Act 110 of 2010 provided a process and timeframe to publish an interim regulation and to promulgate regulations for photo identification badges:

The department...shall publish interim regulations regarding implementation of this section in the Pennsylvania Bulletin within 90 days of the effective date of this section. The interim regulations shall not be subject to...the Commonwealth Documents Law, and...the "Regulatory Review Act." The interim regulations shall expire 18 months following the effective date of this section or when final regulations are promulgated by the department, which occurs first. Final regulations shall be promulgated no later than 18 months following the effective date of this section.

35 P.S. § 448-809b(b). Additionally, the *Pennsylvania Code (Code)* Source for Chapter 53 states, "The interim regulations of this Chapter 53 adopted December 9, 2011, effective December 10, 2011, expire 18 months following the effective date, 41 Pa.B. 6572, unless otherwise noted." It appears that temporary regulations were adopted, but never made permanent.

Act 95 of 1998 amended the Health Care Facilities Act to include hospice services. Act 95 provided that hospice and hospice services established therein, including application fees and licensure requirements, should be directly in regulation.

Section 314 of Act 13 of 2002 provided that "28 Pa Code § 51.3(f) and (g) (relating to notification) shall be abrogated with respect to a medical facility upon the reporting of a serious event, incident or infrastructure failure pursuant to section 313." This is also referenced in the *Code's* Editor's Notes.

Act 144 of 2006 and Act 122 of 2013 (Act 122) postdate the Department's amendment to Chapter 5 made in 1984 (according to notes in the *Code*). By letter dated May 28, 2014 (<https://www.health.pa.gov/topics/Documents/Laboratories/Act%20122%20Letter%2005-28-14.pdf>), the Department notified Laboratory Directors of the new Act 122 requirements, including the imposition of fines.

Act 37 of 2009 (the "Emergency Medical Services Act") was enacted subsequent to Part VII, Chapter 117.

According to the *Code's* Editor's Notes, Act 87 of 2022 abrogated Section 51.22 (cardiac catheterization) and provisions of Section 551.21 insofar as they are inconsistent with section 822 of the Health Care Facilities Act (35 P.S. § 448.822).

### Fees

Statutory fees were established decades ago, including:

- Subsection 5.11(b) includes the statutory \$25 permit fee established by Act 389 of 1951 (35 P.S. § 2154).
- Subsection 30.10(c) requires licensing fees of \$50 and \$200 per year, as specified in 35 P.S. § 6507. It appears these fees were established in 1972.
- Under Section 101.181, all of the fees but one fee referred to in 35 P. S. § 448.807 were established by Act 179 of 1992. The "Home care agency or home care registry" fee was established by Act 69 of 2006.

### IRRC's Review Requests

In our preliminary review of the regulations listed above, we have determined that regulatory changes may be required to reflect current practices and legal directives in Act 9 of 1998, Act 13 of 2002, Act 144 of 2006, Act 37 of 2009, Act 110 of 2010, Act 122 of 2012, and Act 87 of 2022, as well as consideration of the multiple Notes of Decisions that appear in the *Code*. Some provisions either expired or were abrogated by statute. Further, the Department should review fees to determine whether they reasonably cover the Department's costs compared to when the fees were established in statute or regulation. If the Department feels that fee adjustments are warranted as a result of the review requests from the House Health Committee, one or more rulemaking proposals may be submitted for regulatory review and consideration.

The most recent Governor's Regulatory Agenda published in the July 22, 2023 *Pennsylvania Bulletin* does not show any planned amendments to the Chapters or Subparts the Committee requested IRRC to review. Accordingly, we request any information that you can provide to assist in our determination of whether these rulemakings remain in the public interest including, but not limited to: any planned updates or amendments to these regulations pursuant to laws enacted subsequent to their promulgation; any recent or anticipated meetings or engagement with stakeholder groups or parties affected by these regulations to solicit input and feedback on the existing provisions and possible revisions; and any other materials or information you believe may assist us in this matter. We note that it has been many years since the Department has updated these regulations and we therefore lack timely and necessary information to inform our review. Lastly, as your Department reviews each of these regulations and compiles information responsive to our requests, we encourage you to do so in coordination with any other affected agencies, such as the Department of Health and the Bureau of

Secretary Bogen  
Page 4  
September 6, 2023

Professional and Occupational Affairs, as well as the regulated community and other stakeholders to ensure that all changes made by the statutory changes are properly implemented.

While we are flexible on the timeframe to respond, we would appreciate receiving any information you wish to share on or before **November 1, 2023**. Information may be submitted to the mailing address listed above or by email to: [research@irrc.state.pa.us](mailto:research@irrc.state.pa.us).

If you have any questions regarding this matter, please feel free to contact me. Thank you for any assistance that you can provide on this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "DS" with a stylized flourish extending to the right.

David Semner  
Executive Director

Enclosure



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE SECRETARY

November 27, 2023

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

**RE: Department of Health  
Review of Existing Regulations**

Dear Mr. Sumner:

This communication is in response to your letter dated September 6, 2023, regarding your request for assistance in reviewing existing regulations of the Department of Health (Department). Assistance was requested for the following regulations:

- 28 Pa. Code Chapter 5 (relating to clinical laboratories)
- 28 Pa. Code Part I, Chapter 30 (relating to blood banks)
- 28 Pa. Code Part III, Chapter 51 (relating to general information)
- 28 Pa. Code Part III, Subpart A, Chapter 53 (relating to photo identification badges)
- 28 Pa. Code Part IV, Subpart B, Chapters 101 to 158 (relating to general and special hospitals)
- 28 Pa. Code Part IV, Chapter F, Chapters 551-573 (relating to ambulatory surgical facilities)

Specific concerns and questions were raised regarding statutory mandates and changes as it pertains to these regulations, as well as fees. These concerns are addressed below and organized in the same manner as within your letter.

Statutory Mandates and Changes

- 28 Pa. Code Part III, Subpart A, Chapter 53 (relating to photo identification badges)

**IRRC Comment:** Section 1 of Act 110 of 2010 provided a process and timeframe to publish an interim regulation and to promulgate regulations for photo identification badges:

The department...shall publish interim regulations regarding implementation of this section in the Pennsylvania Bulletin within 90 days of the effective date of this section. The interim regulations shall not be subject to...the Commonwealth Documents Law, and... the "Regulatory Review Act." The interim regulations shall expire 18 months following the effective date of this section or when final regulations are promulgated by the department, which occurs first. Final regulations shall be promulgated no later than 18 months following the effective date of this section.

35 P.S. § 448-809b(b). Additionally, the *Pennsylvania Code (Code)* Source for Chapter 53 states, "The interim regulations of this Chapter 53 adopted December 9, 2011, effective December 10, 2011, expire 18 months following the effective date, 41 Pa.B. 6672, unless otherwise noted." It appears that temporary regulations were adopted, but never made permanent.

**Response:** The requirements for photo identification badges are set forth in Section 809.2 of the Health Care Facilities Act (HCFA). 35 P.S. § 448.809b. Section 809.2 was most recently amended by Act 79 of 2022. Act 79 of 2022 became effective on July 11, 2022, and provides the Department with two years from the effective date to implement the statutory amendments to Section 809.2(a)(1) and (e).

While it is true that the temporary regulations in Chapter 53 have expired, health care facilities continue to operate under the statutory requirements of Section 809.2 in the absence of permanent regulations. The Department has received general inquiries about regulations from stakeholders, but no specific concerns have been raised regarding the lack of regulations or the Department's ability to implement Section 809.2 in the absence of regulations. The Department continues to have internal discussions and plans to engage stakeholders in upcoming months, to determine the need for permanent regulations in this area.

- Other – hospice services

**IRRC Comment:** Act 95 of 1998 amended the Health Care Facilities Act to include hospice services. Act 95 provided that hospice and hospice services established therein, including application fees and licensure requirements, should be directly in regulation.

**Response:** Hospices are currently operating under the requirements of HCFA and Federal Medicare Conditions of Participation in Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.) and in regulation at 42 CFR Part 418, Subparts C, D and E. With respect to application fees, Section 806(g)(1) of HCFA states, "until such time as the department provides for the [application] fee by regulation, an application for a hospice license shall be accompanied by a fee of \$250." 35 P.S. § 448.806(g)(1). With respect to licensing requirements, Section 806(g)(2) of HCFA states that regulations for the licensure of hospices shall contain, at a minimum, the standards that are set forth in Federal regulations for certification under the Medicare

program. 35 P.S. § 448.806(g)(2). The Department is permitted to develop additional regulations as necessary, but until such final regulations are adopted, the Department is to operate the hospice licensing program pursuant to interim guidelines that are consistent with the requirement in Section 806(g)(2). The Department is using the Federal Medicare Conditions of Participation as interim guidelines until the final regulations are published. Pennsylvania Department of Health. (2023) Hospice Agency Regulations. Retrieved from <https://www.health.pa.gov/topics/facilities/hospice/Pages/Regulations.aspx>. The Department continues to have internal discussions and plans to engage stakeholders, such as Pennsylvania Homecare Association, in upcoming months to determine the need for regulations in this area.

- 28 Pa. Code Part III, Chapter 51 (relating to general information)

**IRRC Comment:** Section 314 of Act 13 of 2002 provided that "28 Pa Code§ 51.3(f) and (g) (relating to notification) shall be abrogated with respect to a medical facility upon the reporting of a serious event, incident or infrastructure failure pursuant to section 313." This is also referenced in the *Code's* Editor's Notes.

**Response:** Section 314 of Act 13 of 2002, the Medical Care Availability and Reduction of Error (MCARE) Act, abrogated 28 Pa. Code § 51.3(f) and (g) (relating to notification) insofar as those sections relate to a "medical facility." 40 P.S. § 1303.314. A "medical" facility is defined in Section 302 of the MCARE Act as "an ambulatory surgical facility, birth center, hospital or abortion facility." 40 P.S. § 1303.302.

The requirements in 28 Pa. Code § 51.3(f) and (g) apply to a "health care facility" which is defined in Section 802a of HCFA. 35 P.S. § 448.802a. This term is defined more broadly in HCFA than the term "medical facility" in MCARE, and encompasses more than an ambulatory surgical facility, birth center, hospital or abortion facility. Pursuant to Section 802a of HCFA:

[A] health care facility includes, but is not limited to, a general, chronic disease or other type of hospital, a home health care agency, a home care agency, a hospice, a long-term care nursing facility, cancer treatment centers using radiation therapy on an ambulatory basis, an ambulatory surgical facility, a birth center regardless of whether such health care facility is operated for profit, nonprofit or by an agency of the Commonwealth or local government.

Thus, the reporting requirements in 28 Pa. Code § 51.3(f) and (g) are still applicable for home health care agencies, home care agencies, hospices and long-term care nursing facilities. The Department reviewed the reporting requirements in 28 Pa. Code § 51.3(g) and (g) as they pertain to long-term care nursing facilities during the process of amending the regulations applicable to those facilities in 2021 and 2022. The Department plans to review these requirements again as they pertain to other facility types and to engage stakeholders in that process, in upcoming months, to determine the need for updates.

- 28 Pa. Code Chapter 5 (relating to clinical laboratories)

**IRRC Comment:** Act 144 of 2006 and Act 122 of 2013 (Act 122) postdate the Department's amendment to Chapter 5 made in 1984 (according to notes in the Code). By letter dated May 28, 2014 (<https://www.health.pa.gov/topics/Documents/Laboratories/Act%20122%20Letter%2042005-28-14.pdf>), the Department notified Laboratory Directors of the new Act 122 requirements, including the imposition of fines.

**Response:** Act 144 of 2006 amended The Clinical Laboratory Act, 35 P.S. § 2151 et seq., to provide for glomerular filtration rate testing. Act 144 contains very specific requirements related to this testing. Act 122 of 2013 made several amendments to The Clinical Laboratory Act, including allowing the Department to assess penalties under certain, specific circumstances. Specifically, the Department may only assess penalties when a person or clinical laboratory violates the act or its regulations, operates a clinical laboratory without obtaining a permit from the Department, or performs testing without a permit from the Department on any specimen accepted or collected within this Commonwealth. There is a monetary limit on the penalty of up to \$500 per day. Act 144 contains other very specific requirements related to permitting of clinical laboratories and the duties of the Department with respect to licensing and investigation of clinical laboratories. Regulations are not necessary for the Department to enforce the requirements of Act 144 of 2006 or Act 122 of 2013. However, the Department is having internal discussions regarding potential updates to Chapter 5 to better align with Federal certification standards contained in the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C.A. § 263a, and its regulations at 42 CFR Part 493, and plans to engage with stakeholders in upcoming months to determine the need for updates.

- 28 Pa. Code Part IV, Subpart B, Chapters 101 to 158 (relating to general and special hospitals)

**IRRC Comment:** Act 37 of 2009 (the "Emergency Medical Services Act") was enacted subsequent to Part VII, Chapter 117.

**Response:** Chapter 117 (relating to emergency services) is part of the regulations that apply to general and special hospitals. *See* 28 Pa. Code, Part IV, Subpart B. Chapter 117 includes the minimum emergency standards for all hospitals after a patient arrives at a hospital. On the other hand, the Emergency Medical Services System (EMS) Act, generally, provides for trauma certification standards as a subset of hospitals and provides for oversight of EMS personnel and the EMS system pre- and post-arrival at a hospital. The Department is currently engaged in internal discussions regarding updates to the hospital regulations and will continue to do so in the upcoming months. These discussions will include Chapter 117. The Department also plans to move forward with active stakeholder engagement and review of the hospital regulations in upcoming months. This will include stakeholders, such as the Hospital and Healthsystem Association of Pennsylvania and the Pennsylvania Trauma Systems Foundation, to determine the need for updates.

- 28 Pa. Code Part III, Chapter 51 (relating to general information); 28 Pa. Code Part IV, Chapter F, Chapters 551-573 (relating to ambulatory surgical facilities)

**IRRC Comment:** According to the *Code's* Editor's Notes, Act 87 of 2022 abrogated Section 51.22 (cardiac catheterization) and provisions of Section 551.21 insofar as they are inconsistent with section 822 of the Health Care Facilities Act (35 P.S. § 448.822).

**Response:** Act 87 of 2022 abrogated 28 Pa. Code § 51.22 (relating to cardiac catheterization) and 551.21 (relating to criteria for ambulatory surgery) in part, to allow cardiac catheterization to be performed in outpatient settings as opposed to only in an acute care hospital. The Department plans to engage in internal discussions and discussions with stakeholders in the upcoming months to determine the need for updates to address current standards of care for cardiac catheterization.

- 28 Pa. Code Part I, Chapter 30 (relating to blood banks)

**IRRC Comment:** None.

**Response:** The Department is currently engaging in internal discussions regarding these regulations and plans to engage with stakeholders in upcoming months to determine the need for updates.

### Fees

**IRRC Comment:** Statutory fees were established decades ago, including:

- Subsection 5.11(b) includes the statutory \$25 permit fee established by Act 389 of 1951 (35 P.S. § 2154).
- Subsection 30.10(c) requires licensing fees of \$50 and \$200 per year, as specified in 35 P.S. § 6507. It appears these fees were established in 1972.
- Under Section 101.181, all of the fees but one fee referred to in 35 P. S. § 448.807 were established by Act 179 of 1992. The "Home care agency or home care registry" fee was established by Act 69 of 2006.

**Response:** As noted by IRRC, the above fees are specifically stated within, and mandated by, statute. The Department agrees that these fee requirements are outdated, but does not have the authority, through regulation, to change these fees. The Department would support statutory amendments to update these fees.

To conclude, the Department is committed to continuously reviewing and updating regulations, and to engaging with stakeholders during the review process. If additional information is needed, please feel free to contact us.

Sincerely,



Debra L. Bogen, M.D., FAAP  
Acting Secretary of Health  
Pennsylvania Department of Health

GEORGE D. BEDWICK, CHAIRMAN  
JOHN F. MIZNER, ESQ., VICE-CHAIRMAN  
JOHN J. SOROKO, ESQ.  
MURRAY UFBERG, ESQ.  
DENNIS A. WATSON, ESQ.  
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<http://www.irrc.state.pa.us>

## INDEPENDENT REGULATORY REVIEW COMMISSION

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

June 20, 2023

Via Electronic and First Class Mail

Michael D. Pennington, Executive Director  
Pennsylvania Commission on Crime and Delinquency  
P.O. Box 1167  
Harrisburg, PA 17108-1167

Re: Review of Existing Regulations Pursuant to a Request of the Pennsylvania House of Representatives Judiciary Committee

Dear Mr. Pennington:

I am writing to request your assistance in a review of existing regulations being conducted by the Independent Regulatory Review Commission pursuant to requests of standing committees of the Pennsylvania House of Representatives ("Pennsylvania House"). Beginning on September 12, 2022, six standing committees of the Pennsylvania House submitted requests to IRRC asking that we review previously promulgated regulations from various agencies. The enclosed request from the Pennsylvania House Judiciary Committee includes two regulations of the Pennsylvania Commission on Crime and Delinquency: *Final Rulemaking #2428* and *Final Rulemaking #2765* pertaining to crime victim compensation.

*Final Rulemaking #2428* was approved by IRRC on November 16, 2006 and became effective upon publication in the December 23, 2006 edition of the *Pennsylvania Bulletin*. *Final Rulemaking #2765* was deemed to be approved under Section 5(g) of Pennsylvania's Regulatory Review Act on October 21, 2009 and became effective upon publication in the December 12, 2009 *Pennsylvania Bulletin*. Additional information regarding both regulations may be found on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us) by searching each regulation number in the search box.

Under the Section 8.1 of the Regulatory Review Act, IRRC may review any existing regulation which has been in effect for at least three years. If, upon completion of its review, IRRC finds that the regulation is not in the public interest under the criteria outlined in Section 5.2 of the Act, we may submit recommendations to the agency recommending changes to the regulation or to the General Assembly recommending statutory change. 71 P.S. § 745.8a.

In our preliminary review of *Final Rulemaking #2428* and *Final Rulemaking #2765*, we determined that changes may be required by, among other things, Act 77 of 2022 ("Act 77"). Act 77 was signed into law on July 11, 2022 and contained omnibus amendments to the Crime Victims Act which appear to impact your existing regulations. Accordingly, we request any information that you can provide to assist in our

determination of whether *Final Rulemaking #2428* and *Final Rulemaking #2765* remain in the public interest including, but not limited to: any planned updates or amendments to these regulations pursuant to Act 77 or other laws; any recent or anticipated meetings or engagement with stakeholder groups or parties affected by these regulations to solicit input and feedback on the existing provisions and possible revisions; any other materials or information you believe may assist us in this matter. Additional information may be needed from your Commission in the future based on your response and/or as a part of our overall efforts on the Pennsylvania House review requests.

While we are flexible on the timeframe to respond, we would appreciate receiving any information you wish to share on or before **August 15, 2023**. Information may be submitted to the mailing address listed above or by email to: [research@irrc.state.pa.us](mailto:research@irrc.state.pa.us).

If you have any questions regarding this matter, please feel free to contact me. Thank you for any assistance that you can provide on this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Da" followed by a long horizontal flourish.

David Sumner  
Executive Director

Enclosure

August 11, 2023

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
333 Market St, 14th Floor  
Harrisburg, PA 17101

**RE: Pennsylvania Commission on Crime and Delinquency  
Review of Existing Crime Victims Compensation Regulations**

Dear Mr. Sumner:

This is in response to your letter dated June 20, 2023 regarding the review of the crime victim compensation regulations and impact from Act 77 of 2022. There will be proposed amendments to the regulation under the authority of section 312(3) of the Crime Victims Act which is set forth at 18 P.S. §§11.101-11.5102.

Act 77 of 2022 provided a number of changes to the [Crime Victims Act](#) that included *Chapter 7, Compensation*. This will result in some specific changes to the crime victim compensation regulations that will include:

- The removal of the 72-hour requirement for reporting a crime to proper authorities;
- The expansion of the ways to report a crime to proper authorities to include filing a Sexual Violence Protection Order and Protection From Intimidation Order;
- The inclusion of the cost of cleaning a private vehicle as an eligible cost of cleaning a crime scene;
- No longer considering the conduct of a homicide victim in evaluating claims for counseling and funeral expenses.

PCCD will be considering other changes to the crime compensation regulations that modernize the language to include:

- Changing the rates of travel reimbursement to reflect Commonwealth rates and not specific rates that do not keep pace with socioeconomic trends;
- Increasing the maximum amount payable under certain benefits;
- Removing language that no longer applies.

PCCD will be soliciting input from stakeholders that include, but are not limited to, victim service agencies, district attorneys, and victims/survivors regarding revisions to the crime

compensation regulations. This will be done through surveys and meetings over the next several months.

Proposed changes to the crime compensation guidelines will be provided to the IRCC by the Spring of 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Pennington". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Pennington

Executive Director

Pennsylvania Commission on Crime and Delinquency

GEORGE D. BEDWICK, CHAIRMAN  
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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

July 11, 2023

Via Electronic and First Class Mail

The Honorable Laurel R. Harry  
Secretary  
Pennsylvania Department of Corrections  
1920 Technology Parkway  
Mechanicsburg, PA 17050

Re: Review of Existing Regulations Pursuant to a Request of the Pennsylvania House of Representatives Judiciary Committee

Dear Secretary Harry:

I am writing to request your assistance in a review of existing regulations being conducted by the Independent Regulatory Review Commission pursuant to the request of standing committees of the Pennsylvania House of Representatives ("Pennsylvania House"). Beginning on September 12, 2022, six standing committees of the Pennsylvania House submitted requests to IRRC asking that we review previously promulgated regulations from various agencies. The enclosed letter from the Pennsylvania House Judiciary Committee includes six regulations of the Pennsylvania Department of Corrections ("Department"): *Final Rulemakings ##2010, 2011, 2196, 2403, 2544, 2590, 2428, and 2765.*

Under the Section 8.1 of the Regulatory Review Act, IRRC may review any existing regulation which has been in effect for at least three years. If, upon completion of its review, IRRC finds that the regulation is not in the public interest under the criteria outlined in Section 5.2 of the Act, we may submit recommendations to the agency recommending changes to the regulation or to the General Assembly recommending statutory change. 71 P.S. § 745.8a.

### Background on these Regulations

Our review entails the following rulemakings:

- *Final Rulemaking #2010* – IRRC approved this regulation on February 3, 2000. The regulation became effective upon publication in the March 4, 2000 edition of the *Pennsylvania Bulletin*.
- *Final Rulemaking #2011* – IRRC approved this regulation on January 6, 2000. The regulation became effective upon publication in the February 19, 2000 issue of the *Pennsylvania Bulletin*.

- *Final Rulemaking #2196* – IRRC approved this regulation on November 15, 2001. The regulation became effective upon publication in the December 22, 2001 *Pennsylvania Bulletin*.
- *Final Rulemaking #2403* – IRRC approved this regulation on March 10, 2005. The regulation became effective upon publication in the April 16, 2005 *Pennsylvania Bulletin*.
- *Final Rulemaking #2544* – IRRC approved this regulation on August 7, 2008. The regulation became effective upon publication in the October 11, 2008 *Pennsylvania Bulletin*.
- *Final Rulemaking #2590* – IRRC approved this regulation on September 18, 2008. The regulation became effective upon publication in the December 13, 2008 *Pennsylvania Bulletin*.

These rulemakings amended the following chapters of the Department regulations at 37 *Pa. Code*: Chapter 91 Administration (amended by ## 2196 and 2403); Chapter 93 State Correctional Institutions and Facilities (amended by ## 2010, 2196, and 2403); Chapter 94 Release and Prerelease Programs (amended by ## 2196 and 2403); Chapter 95 County Correctional Institutions (amended by ## 2011 and 2544); and Chapter 97 State Intermediate Punishment (amended by #2590).

#### Subsequent Statutory Changes

Four Acts were signed into law (“Omnibus Amendments”) implicating each of the six regulations named by the Judiciary Committee. It is possible that additional regulations, policies, or guidelines of the Department not listed here are also affected.

Act 112 of 2004 (Act 112) amended the Judicial Code (42 Pa.C.S.) and was signed into law on November 19, 2004. Act 33 of 2009 (Act 33) amended the Judicial Code (42 Pa.C.S.) and Prisons and Parole (61 Pa.C.S.) and was signed into law on August 11, 2009. Act 115 of 2019 (Act 115) amended the Judicial Code (42 Pa.C.S.) and Prisons and Parole (61 Pa.C.S.) and was signed into law on December 18, 2019. Act 59 of 2021 (Act 59) amended the Judicial Code (42 Pa.C.S.), Prisons and Parole (61 Pa.C.S.) and State Government (71 Pa.C.S.). Act 59 was signed into law on June 30, 2021.

#### IRRC’s Review Requests

In our preliminary review of the six regulations listed above, we have determined that regulatory changes may be required by, among other things, the Omnibus Amendments that collectively amended the Judicial Code, Prisons and Parole, and State Government provisions. Accordingly, we request any information that you can provide to assist in our determination of whether these six rulemakings remain in the public interest including, but not limited to: any planned updates or amendments to these regulations pursuant to the Omnibus Amendments or other laws; any recent or anticipated meetings or engagement with stakeholder groups or parties affected by these regulations to solicit input and feedback on the existing provisions and possible revisions; any other materials or information you believe may assist us in this matter.

Secretary Harry  
Page 3  
July 11, 2023

We also ask that you complete an updated Regulatory Analysis Form (copy attached) using current data for two of these regulations: #2590 (State Intermediate Punishment) and #2403 (Release and Prerelease Programs). This information will serve two purposes in our review. First, it will aid in our determination of whether these regulations remain in the public interest. Secondly, it will provide context for our review of all of the regulations named by the Judiciary Committee by disclosing current inmate populations, updated fiscal information, and other data necessary in our review. We note that it has been more than 12 years since the Department has promulgated any regulations and we therefore lack timely and necessary information to inform our review.

Lastly, as your Department reviews each of these regulations and compiles information responsive to our requests, we encourage you to do so in coordination with other affected Boards and Commissions to ensure that all changes made by the Omnibus Amendments are properly implemented.

While we are flexible on the timeframe to respond, we would appreciate receiving any information you wish to share on or before September 15, 2023. Information may be submitted to the mailing address listed above or by email to: [research@irrc.state.pa.us](mailto:research@irrc.state.pa.us).

If you have any questions regarding this matter, please feel free to contact me. Thank you for any assistance that you can provide on this important matter.

Very truly yours,



David Sumner  
Executive Director

Enclosures



February 15, 2024

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

**Re: Review of Existing Regulations Pursuant to A Request of The Pennsylvania House of Representatives Judiciary Committee**

I am writing in response to your request to Secretary Laurel R. Harry, dated July 11, 2023, in which you ask for information related to Pennsylvania Department of Corrections Final Rulemakings ## 2010, 2011, 2196, 2403, 2544, and 2590.

You have asked whether there are any planned updates, or amendments to these regulations pursuant to certain Omnibus Amendments or other laws; any recent or anticipated meetings or engagement with stakeholder groups or parties affected by these regulations to solicit input and feedback on the existing provisions and possible revisions; and any other materials or information that may be of assistance to you in determining whether these regulations remain in the public interest. In addition, you have asked that updated Regulatory Analysis Forms be completed for Final Rulemaking #2590 (State Intermediate Punishment) and #2403 (Administration, State Correctional Institutions and Facilities, Release and Prerelease Programs). Updated Regulatory Analysis forms are attached, and the remaining information is below.

**Regulation #19-3: Motivational Boot Camps (IRRC #2010)** added a new subchapter C to 37 Pa. Code Chapter 93 in 2000. The regulations govern the operation of Motivational Boot Camps in the Commonwealth of Pennsylvania. At the time, the regulations were required by the Motivational Boot Camp Act (61 Pa.C.S. § 1121 et seq.). The Act required the Department to promulgate regulations covering the following areas: Inmate Selection Criteria, Establishment of Boot Camp Selection Committees, Program Administration, Inmate Discipline, Curriculum and Supervision. Act 115 of 2019 amended the aforementioned governing statute by creating a presumption of Boot Camp eligibility for defendants and requiring judges to indicate whether a particular defendant is excluded from eligibility. The Department of Corrections has been reviewing current law, policy and internal processes, and it is planning updates to the current regulations in order bring them up to date. The Department will engage stakeholders as necessary to ensure that any updates are in the public interest.

**Regulation #19-4: County Correctional Institutions (IRRC #2011)**, published in February 2000, updated existing requirements for county correctional institutions in 37 Pa. Code Chapter 95. The Department, counties and government stakeholders are aware of the need for

current review and revision of Chapter 95 to illustrate core correctional practices that have evolved over the past 15 years. The Department is actively engaged in the development of updates and proposed amendments to Chapter 95. The Department has been routinely meeting and engaging (generally on a monthly basis) with government stakeholder groups including representation of PA county correctional institution administrators and PA county commissioners, since May 2022, as a collaborative workgroup to develop proposed revisions. The workgroup anticipates completion of review and proposed revisions by the end of 2023.

**Regulation #19-5: Administration and State Correctional Institutions and Facilities (IRRC #2196)**, published December 2001, revised outdated administrative and operational procedures in 37 Pa. Code Chapters 91, 93, and 94, which address state correctional institutions and facilities. The Department is reviewing and plans to revise definitions set forth in Chapter 91 to align with Act 59 of 2021 and ensure conformance with current Department practices and policies. The Department is also drafting revisions to Chapter 93 to conform to changes in Department policy and operations related to inmate correspondence, inmate visiting privileges, purchases for inmates by family and friends, and the Motivational Boot Camp. Regarding Chapter 94 of the rulemaking, Act 33 of 2009 repealed the Pre-release and Work Release provisions of 61 P.S. §§ 1051-1054, which makes the regulations in title 37 §§ 94.1-94.7 obsolete. The Department plans to request that they be repealed. The Department has engaged with the PA Prison Society and Abolitionist Law Center while developing its inmate correspondence policies. Some of the Department's proposed changes have been challenged through litigation that has informed development of these policies. The Department has also engaged with the courts as they are subject to the new policies. The DOC anticipates introducing a Regulatory package containing revisions to these regulations in 2024.

**Regulation #19-6: Administration, State Correctional Institutions and Facilities and Release and Prerelease Programs (IRRC #2403)**, published April 2005, updated further provisions in 37 Pa. Code Chapters 91, 93, and 94 related to restraints, inmate correspondence, inmate privileges, discipline, medical services, and pre-release. As stated above, the Department is reviewing and plans to revise definitions set forth in Chapter 91 to align with Act 59 of 2021 and ensure conformance with current Department practices and policies. The Department is also drafting revisions to Chapter 93 to conform to changes in Department policy and operations related to inmate correspondence, inmate visiting privileges, purchases for inmates by family and friends, and the Motivational Boot Camp. Regarding Chapter 94 of the rulemaking, Act 33 of 2009 repealed the Pre-release and Work Release provisions of 61 P.S. §§ 1051-1054, which makes the regulations in title 37 §§ 94.1-94.7 obsolete. The Department plans to request that they be repealed. The Department has engaged with the PA Prison Society and Abolitionist Law Center while developing its inmate correspondence policies. Some of the Department's proposed changes have been challenged through litigation that has informed development of these policies. The Department has also engaged with the courts as they are subject to the new policies. The DOC anticipates introducing a Regulatory package containing revisions to these regulations in 2024.

**Regulation #19-7: County Correctional Institutions (IRRC #2544)**, published October 2008, updated outdated regulations, made minimum standards consistent with recognized professional standards, proceduralized the declassification of county prisons with noncompliance



issues and amended the inspection process. The Department is actively engaged in the development of updates and proposed amendments to Chapter 95 of Title 37 which encompasses Final Rulemaking #2544. The Department has been routinely meeting and engaging (generally on a monthly basis) with government stakeholder groups including representation of PA county correctional institution administrators and PA county commissioners, since May 2022, as a collaborative workgroup to develop proposed revisions to #2544. The workgroup anticipates its completion of review and proposed revisions by the end of 2023. The Department, counties and government stakeholders are aware of the need for current review and revision to illustrate core correctional practices that have evolved over the past 15 years

**Regulation #19-9: State Intermediate Punishment (IRRC #2590)**, published December 2008, implemented a program to reduce recidivism by providing intense drug and alcohol treatment to certain defendants convicted of drug-related offenses. The existing regulation establishes the parameters for the State Intermediate Punishment (“SIP”) – *now the State Drug Treatment Program (“SDTP”)* – as a result of Act 115 of 2019. The Legislation modified SIP (now SDTP) in several significant ways and the regulation requires updates to conform to current law. *See* 61 Pa.C.S. Chapter 41. The Department is currently preparing proposed regulatory amendments to Ch. 97 to address the legislative and programmatic changes. The Department has not engaged with outside stakeholders at this time. The regulation affects the inmate population and Department employees administering the program. Once a draft amendment is prepared the Department will re-evaluate whether outside engagement is necessary.

Please let me know if you require any additional information.

Very truly yours,

*Tracey Dey Tubbs*

Tracey Dey Tubbs  
Deputy Chief Counsel

Cc: Secretary Laurel R. Harry  
Chief Counsel Timothy Holmes

GEORGE D. BEDWICK, CHAIRMAN  
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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

October 19, 2023

Via Electronic and First Class Mail

The Honorable Nancy A. Walker  
Secretary  
Pennsylvania Department of Labor and Industry  
651 Boas Street  
Harrisburg, PA, US, 17101

**Re:** Review of Existing Regulations Pursuant to a Request of the Pennsylvania House of Representatives Labor and Industry Committee

Dear Secretary Walker:

I am writing to request your assistance in a review of existing regulations being conducted by the Independent Regulatory Review Commission ("IRRC") pursuant to the request of standing committees of the Pennsylvania House of Representatives ("Pennsylvania House"). Beginning on September 12, 2022, six standing committees of the Pennsylvania House submitted requests to IRRC asking that we review previously promulgated regulations from various agencies. The enclosed letter from the Pennsylvania House Labor and Industry Committee, dated September 16, 2022, includes 23 specific Chapters of regulations of the Pennsylvania Department of Labor and Industry ("Department"). A copy of this letter was sent by the Committee to the Department when it was issued last year.

Under the Section 8.1 of the Regulatory Review Act, IRRC may review any existing regulation which has been in effect for at least three years. If, upon completion of its review, IRRC finds that the regulation is not in the public interest under the criteria outlined in Section 5.2 of the Act, we may submit recommendations to the agency recommending changes to the regulation or to the General Assembly recommending statutory change. *71 P.S. § 745.8a.*

### Statutory Changes

Many of the regulations listed by the Committee have been in place for 50 years or more. In the time since these regulations were adopted, legislative action has changed or negated the Department's authority over certain areas; however, related regulations were not amended or deleted in response. By way of example, Subchapter A of 34 Pa. Code Chapter 5 Blasting, Demolition, Fireworks and Explosives was adopted by the Department under the authority of Act 362 of 1957. This authority was specifically transferred to the Pennsylvania Department of Environmental Resources (now the Department of Environmental Protection)

by Section 2 of the Department's Reorganization Plan No. 8 of 1981. 71 P.S. § 751-35 Other statutes, such as Act 45 of 1999, similarly revised the Department's authority in various areas.

### IRRC's Review Requests

IRRC has been researching the requests submitted by the Pennsylvania House Committees, including the Labor and Industry Committee, in order to fulfill our obligations under Section 8.1 of the Regulatory Review Act. In our preliminary review of the regulations promulgated by your Department, we have determined that regulatory changes are required to incorporate directives contained in the specific statutes cited above, and possibly other enactments. Other revisions may be necessary to reflect current practices or to modernize and update existing provisions.

Apart from potential changes to 34 Pa. Code Chapter 101, the most recent Governor's Regulatory Agenda published in the July 22, 2023 *Pennsylvania Bulletin* does not show any planned amendments to the Chapters which the Committee requested IRRC to review. Accordingly, we request any information that you can provide to assist in our determination of whether these rulemakings remain in the public interest including, but not limited to: any planned updates or amendments to these regulations pursuant to laws enacted subsequent to their promulgation; a citation to the specific statutory authority (past and/or present) for any regulation where the source is not listed in the Pennsylvania Code; any recent or anticipated meetings or engagement with stakeholder groups or parties affected by these regulations to solicit input and feedback on the existing provisions and possible revisions; and any other materials or information you believe may assist us in this matter. We note that it has been many years since the Department has updated these regulations and we therefore lack timely and necessary information to inform our review. Lastly, as your Department reviews each of these regulations and compiles information responsive to our requests, we encourage you to do so in coordination with any other affected agencies, such as the Department of Environmental Protection, as well as the regulated community and other stakeholders to ensure that all changes made by the statutory changes are properly implemented.

While we are flexible on the timeframe to respond, we would appreciate receiving any information you wish to share on or before December 15, 2023.

If you have any questions regarding this matter, please feel free to contact me. Thank you for your assistance on this important matter.

Very truly yours,



David Sumner  
Executive Director

Enclosure

March 15, 2024

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
[dsumner@irrc.state.pa.us](mailto:dsumner@irrc.state.pa.us)

*Sent via Electronic Correspondence*

**Re: Pennsylvania Department of Labor & Industry Review of Existing Regulations**

Dear Executive Director Sumner:

I am writing in response to your correspondence, dated October 19, 2023, regarding the Independent Regulatory Review Commission's (IRRC) review of the Department of Labor and Industry's (Department) regulations pursuant to a request from the House Labor and Industry Committee in September 2022 (House Request).

As the IRRC's review and the House Request demonstrate, L&I has a broad mandate that includes an extensive range of regulations. As detailed below, the Department has conducted a review of the regulations listed in the House Request and is providing feedback on areas that may be ripe for amendment or repeal.

In addition to the information set forth below, the Department is actively working on regulatory updates to the following Chapters highlighted in the House Request and which were included the most recent Governor's Regulatory Agenda published in the July 22, 2023 Pennsylvania Bulletin: Pa. Code 34, Chapter 101 (telephone hearings); and Pa. Code 34, Chapter 405 (Elevators and Other Lifting Devices). Consistent with the policies articulated in the House Request, the Department's regulatory agenda further includes the following chapters which need updating because of intervening statutory or other changes: Pa. Code 34, Chapter 501 (Registration of Sign Language Interpreter and Translitterators); Pa. Code 34, Chapter 123 Subchapter B (Impairment Ratings); and Pa. Code 34, Chapters 14 and 14a (Flammable and Combustible Liquids).

## **1. Regulations Reviewed for Enforcement and Validity**

The Department has reviewed the regulations identified by the House Request to determine their ongoing validity, and in several places believes regulations may be repealed or modified to simplify the code and/or eliminate obsolete regulations.

### **Pa. Code 34, Chapter 5 (Blasting, Demolition, Fireworks and Explosives)**

The Department is not currently enforcing these regulations due to authority being delegated to other agencies. Under 71 P.S. §751-35, all functions, powers and duties regarding the storage and possession of explosives pursuant to The Act of July 1, 1937 (P.L. 2681, No. 537), and all functions, powers and duties regarding the use of explosives, pursuant to The Act of July 10, 1957 (P.L. 685, No. 362), were transferred from the Department to the PA Department of Environmental Resources<sup>1</sup>, which has its own code provisions. To the extent the Department regulates in this space, such regulation arises under the Uniform Construction Code.

Additionally, the U.S. Consumer Product Safety Commission (CPSC) has issued mandatory safety regulations for firework devices and enforces the regulations under the Federal Hazardous Substances Act (FHSA), 15 U.S.C. §1261. Further, the federal Occupational Safety and Health Administration (OSHA) and the PA Department of Environmental Protection address the safety of employees and the processes of the material being handled at buildings.

As a result, the Department believes that Pa. Code 34, Chapter 5 likely can be repealed.

### **Pa. Code 34, Chapter 7 (Elevators, Lifts, Escalators, Dumbwaiters, Hoists and Tramways)**

This chapter remains in effect for equipment installed prior to 2004. As long as the equipment is maintained to the requirements of the code and meet the regulations in effect at the time of installation and certificate of operation, certain Chapter 7 regulations function as a complement to Chapter 405 under the Uniform Construction Code.

### **Pa. Code 34, Chapter 13 (Propane and Liquefied Petroleum Gas), Subchapter B (Lead Corroding and Oxidizing)**

Although these regulations no longer apply to private sector workplaces pursuant to the federal Occupational Safety and Health Act (OSH Act), they retain ongoing applicability in the event of issues arising in public sector workplaces.

### **Pa. Code 34, Chapter 23 (Laundering and Dyeing Establishments), Subchapter B (Dry Cleaning and Dyeing)**

Although these regulations no longer apply to private sector workplaces pursuant to the

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<sup>1</sup> Act 18 of 1995 split The Department of Environmental Resources into the Department of Environmental Protection (DEP) and the Department of Conservation and Natural Resources (DCNR).

OSH Act, they retain ongoing applicability in the event of issues arising in public sector workplaces.

**Pa. Code 34, Chapter 31 (Migrant Labor), Subchapter C (Seasonal Farm Labor)**

Although certain provisions of the Seasonal Farm Labor Act have been repealed, the bulk of the law remains in effect and the Department retains jurisdiction over enforcement. House Bill 1029 of 2023 proposed substantial amendments to the Act but it has not been passed by the Legislature. As such, Chapter 31 retains ongoing usefulness to the Department's jurisdiction under the Seasonal Farm Labor Act.

**Pa. Code 34, Chapter 38 (Building Energy Conservation Standards)**

These regulations have been superseded by the Uniform Construction Code and, as a result, the Department believes that Pa. Code 34, Chapter 38 likely can be repealed.

**Pa. Code 34, Chapter 47 (Miscellaneous Provisions), Subchapter D (Facilities for Handicapped) and Chapter 60 (Universal Accessibility Standards)**

These regulations have been superseded by the Uniform Construction Code and, as a result, the Department believes that Pa. Code 34, Chapter 47, Subchapter D and Chapter 60 likely can be repealed.

**Pa Code 34, (Regulations issued under the General Safety Law, Act 174 of 1937)**

Chapter 6 (Construction and Repairs)

The Department believes that Pa. Code 34, Chapter 6 can be amended to account for passage of the Uniform Construction Code. Wholesale repeal, however, is not warranted given the ongoing applicability of some provisions to public sector workplaces.

Chapter 13 (Propane and Liquefied Petroleum Gas), Subchapter C (Manufacture of Nitro and Amino Compounds)

The Department, specifically the Boiler Division of the Bureau of Occupational and Industrial Safety, continues to enforce these regulations. Further information is available on the Department's [website](#).

Chapter 19 (Industries – Food and Drink)

Although these regulations no longer apply to private sector workplaces pursuant to the OSH Act, they retain ongoing applicability in public sector workplaces.

Chapter 21 (Ladders)

Although these regulations no longer apply to private sector workplaces pursuant to the

OSH Act, they retain ongoing applicability in public sector workplaces. The Department has received complaints relating to these regulations at public sector workplaces.

Chapter 23 (Laundering and Dyeing Establishments), Subchapter A (Laundries)

Although these regulations no longer apply to private sector workplaces pursuant to the OSH Act, they retain ongoing applicability in public sector workplaces.

Chapter 25 (Lifting and Carrying Apparatus)

Although these regulations no longer apply to private sector workplaces pursuant to the OSH Act, they retain ongoing applicability in public sector workplaces.

Chapter 27 (Lighting)

The Department believes that Pa. Code 34, Chapter 27 can likely be repealed due to regulation of lighting under the Uniform Construction Code.

Chapter 29 (Mechanical Apparatus – Miscellaneous):

The Department believes that Subchapter A (Power Foot and Hand Cold Metal Presses), Subchapter B (Powder Actuated Tools), Subchapter C (Mechanical Power Transmission Apparatus), Subchapter D (Stationary Engines), and Subchapter E (Machine Tools) retain ongoing validity in public sector workplaces, notwithstanding the applicability of the OSH Act.

Chapter 31 (Migrant Labor), Subchapter A (Crew Leaders) and Subchapter B (Transportation of Workers)

While certain farm labor functions reside with other state or federal agencies, the Department continues to register farm labor contractors under these regulations. Further information is available on the Department's website.

Chapter 35 (Paints)

Although these regulations no longer apply to private sector workplaces pursuant to the OSH Act, they retain ongoing applicability in public sector workplaces.

Chapter 39 (Safety Standards – General), Subchapter A (Safe Practices) and Subchapter B (Head and Eye Protection)

Although these regulations no longer apply to private sector workplaces pursuant to the OSH Act, they retain ongoing applicability in public sector workplaces.

Chapter 41 (Sanitation), Subchapter A (Industrial Sanitation)

Although these regulations no longer apply to private sector workplaces pursuant to the

OSH Act, they retain ongoing applicability in public sector workplaces.

Chapter 43 (Tunnel Construction and Compressed Air Work)

Although these regulations no longer apply to private sector workplaces pursuant to the OSH Act, they retain ongoing applicability in public sector workplaces.

Chapter 45 (Woodworking and Related Occupations)

Although these regulations no longer apply to private sector workplaces pursuant to the OSH Act, they retain ongoing applicability in public sector workplaces.

Chapter 47 (Miscellaneous Provisions):

The Department believes that the following subchapters likely can be repealed due to the enactment of the OSH Act:

- Subchapter B (Cereal Mills, Maltings and Grain Elevators);
- Subchapter E (Foundries); and
- Subchapter I (Textile Industries).

Although the following subchapters no longer apply to private sector workplaces pursuant to the OSH Act, they retain ongoing applicability in public sector workplaces.

- Subchapter C (Dry Color Industry);
- Subchapter F (Printing and Related Industries);
- Subchapter G (Railings, Toeboards, Open sided Floors, Platforms and Runways); and
- Subchapter J (Window Cleaning).

**2. Regulations Reviewed for Statutory Authority**

The following three sets of regulations identified by the House Request were validly promulgated but have since been modified by federal laws that preempt certain state regulation. While each still has ongoing applicability, they could benefit from updating to account for the changed federal legal landscape.

**Pa. Code 34, Chapter 29 (Mechanical Apparatus – Miscellaneous), Subchapter F (Abrasive Wheels)**

These regulations were issued pursuant to authority under the General Safety Law, 43 P.S. § 25-1-25-15, which permits regulation of dangerous equipment at § 25-2, and states that the Department “may prepare and publish for the use of industry recommendations for safe practices as a guide in the elimination of accidents.” 43 P.S. § 25-10. However, since promulgation, OSH Act has preempted the regulations with respect to private workplaces, so these currently only apply to public sector workplaces.

Note that the United States Department of Labor (DOL) has implemented regulations governing the use of abrasive wheels at 29 C.F.R. § 1926.303 (1979, last amended 2018) and 29 C.F.R. § 1910.215 (1974, last amended 1996). Of note, OSHA has incorporated the ANSI B7.1-1970 standard for abrasive wheels into its own regulations by reference at 29 C.F.R. § 1910.6(e)(15).

**Pa. Code 34, Chapter 41 (Sanitation), Subchapter B (Railroad Sanitation)**

These regulations were authorized under the General Safety Law, 43 P.S. § 25-1-25-15. While the General Safety Law is preempted with respect to private workplaces by the OSH Act and accompanying regulations, the Railroad Sanitation regulations only apply to public sector workplaces such as SEPTA, PRT, the Port Authority Transit Corp., and other employees working for public railroad facilities. Section 25-12 of the law authorizes the Department “to make, alter, amend, and repeal rules and regulations for carrying into effect all the provisions of this act, and applying such provisions to specific conditions.” While the Law does not mention railroad sanitation specifically, it governs safety and health standards at public workplaces generally. This includes, most relevantly to these railroad regulations, § 25-3:

All establishments shall be adequately lighted, heated, and ventilated. Proper sanitary facilities shall be provided in sufficient number for the persons employed, and shall include toilet facilities, washing facilities, dressing rooms, and wholesome drinking water of approved quality.

Most of the Railroad Sanitation regulations cover these topics, including toilet facilities (34 Pa Code §§ 41.121-41.126), washing facilities (§§ 41.131-132), dressing facilities (§§ 41.141-142), drinking water (§ 41.151), ventilation, lighting and heating (e.g. §§ 41.162, 41.171, 41.182). The penalties for violations of the regulations also cites to the General Safety Law. 34 Pa. Code § 41.113 (citing 43 P.S. § 25-15).

Insofar as the regulations also deal with fire safety (34 Pa. Code § 41.114), the Fire and Panic Act, 35 P.S. § 1221-1235.1, may provide additional statutory support.

**Pa. Code 34, Chapter 47 (Miscellaneous Provisions), Subchapter K (Safety Glazing Material)**

Adopted in 1972 and last amended in 1979, these regulations were authorized by the Safety Glazing Materials Act of 1971, 35 P.S. § 5811 (Act of June 2, 1971, P.L. 115, No. 5, § 1), which permitted the Department to establish regulatory requirements as to safety glazing materials, in addition to those listed in “USA Standard Z-97.1-1966.” These regulations have since been preempted in part by the federal Consumer Protection and Safety Act (CPSA), 15 U.S.C. § 2051 et seq., and corresponding regulations establishing safety standards for safety glazing materials. 16 C.F.R. §§ 1201.1-1201.7, 1201.40. The CPSA preempts states from enforcing statutes or regulations that purport to prescribe “any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.” 15 U.S.C. § 2075(a).

While the regulations leave room for the Department to require the submission of plans and to enforce the federal standards, the Department believes these regulations can be amended to account for federal law changes.

### **3. Regulations Reviewed for the Public Interest**

The House Request identified several regulations to be reviewed to determine whether they are in the public interest. As set forth below, the identified regulations largely remain in the public interest, though the Department is either working on or monitoring some of the regulations for amendments.

#### **Pa. Code 34, Chapter 83 (Welfare of Apprentices)**

This Chapter was enacted in 1979 under authority granted by Section 4 of The Apprenticeship and Training Act, 43 P.S. § 90.4. While the regulations are old, the Department runs an active Apprenticeship and Training Office (ATO) with an Apprenticeship and Training Council. These regulations govern the Department's Apprenticeship and Training Program and remain in the public interest.

The ATO receives significant federal funding and is a federally recognized State Apprenticeship Agency. On January 17, 2024, DOL announced that it was proposing to update its regulations governing apprenticeships. These regulations will likely affect Pennsylvania's apprenticeship program and may require statutory and regulatory changes. The Department believes it is prudent to wait to consider updating its regulations until the final federal regulations are promulgated.

#### **Pa. Code 34, Chapter 101 (General Requirements), Subchapter E (Telephone hearings)**

34 Pa. Code § 101.128 currently sets forth the standards for testimony by telephone:

- (a) The tribunal may schedule, on its own motion, testimony by telephone of a party or witness when it appears from the record that the party or witness is located at least 50 miles from the location at which the tribunal will conduct the hearing, without regard to State boundaries.
- (b) The tribunal may schedule testimony by telephone of a party or witness, at the request of one or more parties, when one of the following applies: (1) The parties consent to the receipt of testimony by telephone. (2) The party or witness is reasonably unable to testify in person due to a compelling employment, transportation, or health reason, or other compelling problem.

The Department is currently in the process of seeking to amend not only regulation 101.128, but several provisions in Chapter 101, which are outdated in relation to current technology and in relation to the UC Claims System. The proposed amendments would modify the circumstances under which a party can request a telephone (or video) hearing, essentially making it easier to obtain a telephone hearing, and modify the circumstances under which a referee can schedule a remote hearing on his or her own. To date, UCBR has solicited comments from stakeholders, held multiple listening sessions with these stakeholders throughout the state and

virtually, and distributed to stakeholders an exposure draft of the proposed amendments. The comment period on the exposure draft closed on Monday, February 26, 2024, and UCBR received comments from 10 different stakeholders. UCBR is in the process of reviewing the stakeholder feedback, making any necessary changes to the amendments before proceeding with next steps in the rulemaking process including, eventually, providing draft rules and supporting documents to IRRC.

### **Pa. Code 34, Chapter 127 (Medical Cost Containment)**

The three specified Cost Containment Regulations are 34 Pa. Code § 127.208, 34 Pa. Code § 127.254 and 34 Pa. Code § 127.755. Of these, 34 Pa. Code §§ 127.208 and 127.755 were last amended on January 17, 1998, while 34 Pa. Code § 127.254 has not been amended since its adoption on November 11, 1995. However, it does not appear that the relevant sections of the Workers' Compensation Act (Act) relating to the specified Cost Containment Regulations have been amended since that time.

The Regulation at 34 Pa. Code § 127.208 details a 30-day period in which an insurer must make payment for medical expenses, with tolling allowed in situations where utilization review is sought. This Regulation lines up with certain portions of Section 306(f.1)(5) of the Act, 77 P.S. § 531(5), relating to general payment of medical bills and utilization review. Section 306(f.1)(5) of the Act was last amended in 1996. While some of the provisions of the Regulations are not explicitly stated in the Act and the language of the Regulations do not mirror that of the Act precisely, the Department has not identified any discrepancies between the language of the Act and the Regulation.

The Regulation at 34 Pa. Code § 127.755 provides specific detail for what constitutes "a clearly written notification of the employee's rights and duties" as required by Section 306(f.1)(1)(i) of the Act, 77 P. S. § 531(1)(i), in situations where an employer has established a list of designated health care providers. Similar to the above, Section 306(f.1)(1)(i) of the Act was last amended in 1996. The 1996 amendments increased the number of permissible coordinated care organizations from two to four and increased the amount of time a claimant must treat with panel providers from 30 to 90 days, with additional language added regarding invasive surgery options. The 1998 amendments to the Regulations, in turn, adopted the 90-day language and added a new paragraph restating (in somewhat different terms) the invasive surgery language in the 1996 amendments to the Act. As a result, it does not appear that new amendments to the Act created any discrepancy between Section 306(f.1)(1)(i) and the Regulations; rather, any such discrepancy would have already been present in the 1998 amendment to the Regulations.

The Regulation at 34 Pa. Code § 127.254 details evidentiary requirements in cases where changes in procedure codes are the basis for a fee dispute, as well as dictating the resolution of downcoding controversies where an insurer has failed to comply with a different Regulation, at 34 Pa. Code § 127.207. In turn, 127.207 (which, like 127.254, has not been amended since its 1995 adoption), appears to refer to Section 306(f.1)(3)(vii) and (viii) of the Act, 77 P. S. § 531(3)(vii) and (viii), which discusses provider codes. This language of the Act has not been amended since 1993. Moreover, there does not appear to be any discrepancy between the Regulations at 127.254 and 127.207.

It is notable that all three of these Regulations relate to Section 306(f.1) of the Act. As a result, it is possible that the Labor and Industry Committee's concern stems from the fact that Section 306(f.1)(3)(vi) dealing with average wholesale price was amended in 2014. Of note, Section 306(f.1)(3)(vi) has been the subject of a recent significant Commonwealth Court decision and a petition for review is currently pending before the PA Supreme Court. However, the amended portion of Section 306(f.1) does not implicate the Medical Cost Containment Regulations as specified by the House Request.

To the extent the House Committee and/or stakeholders believe some provisions in the regulations run counter to the statutory language or create confusion, the Department would need more specific information to respond to such concerns. As is, the Department is unable to discern any obvious issues as expressed by the House Request.

Finally, the Department notes that, although not specifically identified by the House Request, the Department is in the process of amending the IRE Regulations.

**Pa. Code 34, Chapter 131 (Special Rules of Administrative Practices and Procedure Before Workers' Compensation Judges)**

The Department welcomes specific input from stakeholders regarding improvements that could be made to these regulations. With respect to filing timelines, the Department believes the current timelines are reasonable and is mindful that not all filers use the WCAIS system and notes that the timelines contained in the regulations contemplate individuals who may be filing physical documents outside of the WCAIS system. With respect to the *Lorino v. WCAB* decision, the Department is monitoring subsequent caselaw to better understand the discretion afforded to judges in awarding attorneys' fees in reasonable context cases. The Department believes a regulation prescribing that exercise of discretion is premature at this stage.

**Pa. Code 34, Chapter 401 (Uniform Construction Code Training and Certification of Code Administrators)**

Promulgated on April 4, 2004, and last amended on February 14, 2022, the Department continues to certify Code Administrators based on the regulations, oversee continuing education requirements, keep a list of Code Administrators, and decertify if necessary. The regulations continue to play an important role in training and certification and are in the public interest.

The House Request raised several points in relation to this Chapter:

- Amendments to Section 401.1 definitions: the Department is reviewing Chapter 401 for potential amendments but does not have a timeline for initiating a more formal rulemaking process;
- Corrective Action: the Department believes that the existing complaint process and timelines under the code are reasonable and workable;
- On-the-job trainees: the Department regularly trains and certifies new code administrators and training by municipalities or other entities is not proscribed by the law or code.

However, changes to broaden on-the-job-training and to allow for the submission of reports by trainees should be addressed be legislatively rather than by the Department through rulemaking; and

- **Certification escrow:** the Department is considering provisions relating to escrow and reciprocity with other states but does not have a timeline for initiating a more formal rulemaking process.

#### **4. Other Regulatory Priorities**

Consistent with the policies articulated in the House Request, the Department's regulatory agenda further includes the following chapters which need updating because of intervening statutory or other changes:

##### **Pa. Code 34, Chapter 501 (Office of Deaf and Hard of Hearing: Registration of Sign Language Interpreter and Transliterators)**

The Department is currently working to update this Chapter to align with statutory changes made in Act of Nov. 23, 2010 (P.L. 1355, No. 124) and because the tests cited within the regulation no longer exist. The proposed rulemaking will remove citations of specific examinations, which are no longer being offered, and allow the Office of the Deaf and Hard of Hearing (ODHH) to publish an annual list of approved examinations. Further, it will update the regulation to provide for provisional registration process and fees in accordance with the changes made in Act 124 of 2010. The proposed regulations are currently under review by the Governor's Office and are expected to be submitted to the IRRC as soon as the initial stages of review are complete.

##### **Pa Code, 34, Chapter 123 Subchapter B. (Bureau of Workers' Compensation: Impairment Ratings) (Regulation #12-117).**

The Department is currently working to update this Chapter to align with statutory changes made in the Act of Oct. 24, 2018 (P.L. 714, No. 111) and recent case law. The Department's existing regulations are based on the now-repealed Section 306(a.2) of the Workers' Compensation Act and are inconsistent with the Act. As such, the proposed rulemaking will update our regulation to reflect the changes the General Assembly made to impairment rating evaluations (IRE) including specifying use of the 6<sup>th</sup> edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" and reducing the impairment rating threshold from 50 percent to 35 percent. Proposed regulations have already been published and the Department is working on the final-form regulation.

##### **Pa Code 34, Chapters 14 and 14a (Bureau of Occupational and Industrial Safety: Flammable and Combustible Liquids)**

The Department is currently working to update these Chapters to align with the Act of Oct. 8, 2012 (P.L. 1188, No. 144), which transferred oversight of the storage and dispensing of compressed natural gas from the Pennsylvania State Police to the Department. Additionally, the current standards are outdated. The Department has completed initial stakeholder outreach to solicit feedback and is drafting proposed regulations which are expected to be published in 2024.

The Department is committed to continuing to update regulations under its purview and looks forward to updating additional chapters going forward based on both the criteria set forth in the House Request and other regulatory needs. The Department welcomes additional feedback from the IRRC as it builds out its next regulatory agenda and identifies the highest-priority areas for new rulemaking. And as always, the Department shares the IRRC's commitment to ensuring that robust stakeholder input, from both regulated communities and sister agencies, informs the Department's regulatory process.

If you have any questions regarding this matter, please feel free to contact me. Thank you for your assistance on this important initiative.

Very truly yours,

A handwritten signature in black ink that reads "Nancy A. Walker". The signature is written in a cursive style with a large, sweeping initial "N".

Nancy A. Walker  
Secretary

GEORGE D. BEDWICK, CHAIRMAN  
JOHN F. MIZNER, ESQ., VICE-CHAIRMAN  
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IRAY UFBERG, ESQ.  
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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

November 18, 2022

Vincent DeLiberato  
Chair, Joint Committee on Documents  
641 Main Capitol  
Harrisburg, PA 17120

RE: Request to Review IRRC Regulation #3125 (General Revisions)

Dear Mr. DeLiberato:

By letter dated September 12, 2022 (copy attached), the House State Government Committee requested the Independent Regulatory Review Commission (IRRC) to conduct a review of certain regulations that have been in effect for at least three years pursuant to Section 8.1 of the Regulatory Review Act (RRA). Section 8.1 provides as follows:

The commission [IRRC], on its motion or at the request of any person or member of the General Assembly, may review any existing regulation which has been in effect for at least three years. If a committee of the Senate or the House of Representatives requests a review of an existing regulation, the commission shall perform the review and shall assign it high priority. The commission may submit recommendations to an agency recommending changes in existing regulations if it finds the existing regulations to be contrary to the public interest under the criteria established in section 5.2. The commission may also make recommendations to the General Assembly and the Governor for statutory changes if the commission finds that any existing regulation may be contrary to the public interest.

71 P.S § 745.8a, 1 Pa Code § 315.1.

In its request, the Committee included IRRC #3125 General Revisions (#70-9), which contained the most recent amendments to IRRC's existing regulations in 1 Pa. Code Part III, Chapters 301-315. These amendments were approved by the Joint Committee on Documents (JCD) on March 1, 2018 and published on March 17, 2018.

The Committee expressed concern that Section 315.1(a) of this regulation is inconsistent with Section 8.1 of the Act because it does not include the phrase "...shall perform the review and..." immediately before "assign it high priority." Section 315.1 in its entirety provides the following:

**§ 315.1. Review of an existing regulation.**

- (a) The Commission, on its own motion or at the request of any person or member of the General Assembly, may review an existing regulation which has been in effect for at least 3 years, under section 8.1 of the act (71 P.S. § 745.8a). If a committee of the Senate or House of Representatives requests the review, the Commission will assign it high priority.
- (b) Upon delivery of a request to review an existing regulation, the Commission will initiate a preliminary review to determine whether further review is warranted.
- (c) If the Commission determines that further review is not warranted, the matter will be closed. The Commission will notify the person or entity requesting the review of the existing regulation that no further action will be taken.
- (d) If it is determined that further review is warranted, the Commission will notify the agency of the issues that have been raised and request a written response.
- (e) After review of the agency's response and other relevant material, the Commission will issue a report setting forth its findings, conclusions or recommendations.
- (f) The Commission will deliver its report to the agency, the committees, the Governor and the Attorney General. The Commission's report may include recommendations for amendment of the statute that provides statutory authority for the regulation.

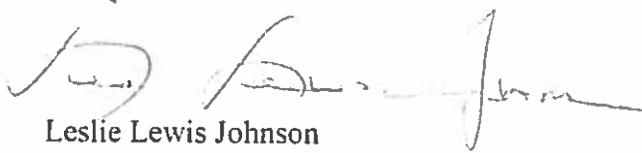
1 Pa. Code § 315.1.

The Committee also requested that the remainder of IRRC's regulations be reviewed "to determine whether further updates and revisions are necessary."

When reviewing IRRC regulations under the RRA, the JCD shall perform the functions that IRRC would otherwise undertake and IRRC shall act as the agency. 71 P.S. § 745.11. Accordingly, at its public meeting on October 20, 2022, IRRC voted to refer the Committee's request to the JCD for review.

If you need any information as you consider this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leslie Lewis Johnson', written in a cursive style.

Leslie Lewis Johnson  
Chief Counsel

C: George & David

Attachments

**COMMONWEALTH OF  
PENNSYLVANIA**



**JOINT COMMITTEE ON  
DOCUMENTS**

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*President Pro Tempore, Senate of Pennsylvania*

*Jay Costa*  
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*Speaker, House of Representatives*

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*Director, Pennsylvania Code and Bulletin*

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*Secretary of General Services*

*Michelle Henry*  
*Attorney General*

*Public Member*

*Public Member*

May 9, 2023

Vincent C. DeLiberato  
Chairperson, Joint Committee on Documents  
641 Main Capitol Building  
Harrisburg, PA 17120

**Re: Request to Review IRRC Regulations**

Dear Chairperson DeLiberato:

By letter dated November 18, 2022 (attached) to Chairperson DeLiberato, Leslie Lewis Johnson, Chief Counsel of the Independent Regulatory Review Commission (“IRRC”), relayed the House State Government Committee’s (“Committee”) request to review IRRC’s regulations pursuant to section 8.1 of the Regulatory Review Act (“RRA”). The Joint Committee on Documents is obligated to review IRRC regulations pursuant to section 11 of the RRA. IRRC voted to refer the Committee’s request to the Joint Committee on Documents at its public meeting on October 20, 2022.

In its request for a review of IRRC’s regulations, the Committee expressed concern that section 8.1 of the RRA (“section 8.1”) is inconsistent with 1 Pa. Code § 315.1(a) (“section 315.1(a)”). Section 8.1, in part, requires that IRRC perform any review of an existing regulation upon request by a committee of the Senate or House of Representatives: “the commission shall perform the review and shall assign it high priority.” 71 P.S. § 745.8. IRRC may review an existing regulation upon request of a person or member of the General Assembly, but such review is not required. *Id.*

Section 315.1(a) states, in pertinent part, that, upon receiving a request from a legislative committee to review an existing regulation, “the Commission will assign it high priority.” 1 Pa. Code § 315.1(a). While section 315.1(a) does not contain the phrase “shall perform the review,” the requirement to assign the review high priority accomplishes the same goal as explicitly directing IRRC to perform the review and assign it high priority as required under section 8.1. *Id.* There is no reason to assign an *optional* task high priority. Rather than restating section 8.1, section 315.1(a) describes the manner in which the Commission is to perform the required review.

I do not believe there is any inconsistency between section 315.1(a) and section 8.1. As such, section 315.1(a) does not require a curative amendment.

We additionally reviewed the remainder of 1 Pa. Code Part III (relating to the Independent Regulatory Review Commission) for ambiguity and discrepancies with corresponding statutes under the RRA. We found none.

Sincerely,

Peter Klein, Esq.  
Joint Committee on Documents  
Counsel  
501 N. 3<sup>rd</sup> Street  
641 Main Capitol Building  
Harrisburg, PA 17120  
717-787-5220

**COMMONWEALTH OF  
PENNSYLVANIA**



**JOINT COMMITTEE ON  
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*Director, Legislative Reference*  
*Bureau*

*Amy J. Mendelsohn*  
*Director, Pennsylvania Code and*  
*Bulletin*

*Reggie McNeil*  
*Secretary of General Services*

*Michelle Henry*  
*Attorney General*

*Dusty Elias Kirk*  
*Public Member*

*Lauren Orazi*  
*Public Member*

January 5, 2024

*Via Electronic Mail*

David Sumner

Executive Director, Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Fl.  
Harrisburg, PA 17101

**Re: Review of Existing Regulations Pursuant to a Request of the Pennsylvania  
House of Representatives State Government Committee**

Dear David:

The Legislative Reference Bureau carries out the functions of the Joint Committee on Documents. A memorandum from the Bureau addressing your questions is attached.

Sincerely,

  
Vince DeLiberato  
Director, Joint Committee on Documents  
501 N. 3<sup>rd</sup> Street  
641 Main Capitol Building  
Harrisburg, PA 17120  
717-783-3989

# Commonwealth of Pennsylvania

## Legislative Reference Bureau

January 5, 2024

**SUBJECT:** Review of Existing Regulations Pursuant to a Request of the Pennsylvania House of Representatives State Government Committee

**TO:** Mr. David Sumner  
Executive Director  
Independent Regulatory Review Commission

**FROM:** Peter Klein  
Associate Counsel

Thank you for your letter dated November 22, 2023 (attached), in which you relayed a request from the House State Government Committee (“Committee”) to review two Joint Committee on Documents regulations pursuant to section 8.1 of the Regulatory Review Act (“RRA”): Regulation #53-7 (IRRC #1532) (requiring submission of diskette), 1 Pa. Code § 13.11 (“Section 13.11”); and Regulation # 53-9 (IRRC #2861) (inclusion of definitions for “legal material” and “official publisher”), 1 Pa. Code § 1.4 (“Section 1.4”)

Section 8.1, in part, requires that IRRC review existing regulations upon request by a committee of the Senate or House of Representatives: “the commission shall perform the review and shall assign it high priority.” 71 P.S. § 745.8a. IRRC may review an existing regulation upon request of a person or member of the General Assembly, but such review is not required. *Id.* If IRRC finds that a regulation is inconsistent with the public interest, it may submit recommended changes either to the agency to amend the rulemaking or to the General Assembly for statutory amendment. *Id.*

### 1. Regulation #53-7 (IRRC #1532), 1 Pa. Code §13.11(b) (Diskette Requirements)

I do not recommend any changes to section 13.11. The regulation, in part, requires that an agency provide the Legislative Reference Bureau (“Bureau”) with a diskette in addition to the two original hard copies of a document submitted for publication in the *Pennsylvania Bulletin* (“*Bulletin*”). 1 Pa. Code § 13.11(b). The Committee noted the outdated requirement to provide diskettes, presumably due to agency use of electronic submission for documents. Upon your

review, you recommended that the Joint Committee on Documents: 1) consider removing the diskette requirement; and 2) specify an alternate method for delivering documents.

Agency failure to submit a diskette under section 13.11(b) does not impact the validity of a document submitted to the Bureau electronically. Section 13.11 provides that agencies may submit rulemakings in an alternate format other than hard copy and diskette. *See* section 13.11(d) and (e). An alternate format, which is not defined or limited under section 13.11, may either be determined by the Bureau and published as a notice in the *Bulletin* under subsection (d) or on a case-by-case basis by agreement between the submitting agency and the Bureau under subsection (e). Section 13.11(d) and (e). The alternate format provisions operate independently of each other, and adoption of an alternate format under either provision would supplant the twin requirements of hard copies and corresponding diskette under section 13.11(a) and (b).<sup>1</sup>

The Bureau has not published a notice in the *Bulletin* identifying an alternate format for submitting documents for publication, such as electronic delivery, as permitted under section 13.11(d). A notice, however, is likely not necessary as agency submission of a document, and Bureau acceptance for publication, via electronic mail constitutes an agreement, albeit implied, between the depositing agency and the Bureau as contemplated under section 13.11(c). There is nothing in section 13.11 that suggests the Bureau's current policy of submission and acceptance of a document via electronic mail without an official or declared agreement between the Bureau and the submitting agency offends section 13.11(e).

Further, an agency using an alternate method of delivery under section 13.11(d) or (e) is not required to submit a letter under section 13.11(f) explaining its failure to comply with the diskette requirement. *See* section 13.11(f) (stating that a depositing agency "unable to comply with subsection (b) for lack of access to computer equipment" must submit a letter of explanation in lieu of a diskette). The requirement to submit a letter contemplates the continued reliance on hard copies for depositing documents for publication and only applies where an agency is *unable* to comply with the diskette requirement. While current technology likely renders most agencies unable to readily comply with the diskette requirement, section 13.11(f) is inoperable as the Bureau's current practice of accepting documents electronically under section 13.11(e) has supplanted the hard copy and diskette requirements under section 13.11(a) and (b). The same holds true if the Bureau were to publish notice of an alternate format for submitting documents under section 13.11(d).

No changes to section 13.11 are necessary as the use of an alternate format under subsection (d) or (e) renders obsolete the requirement for a diskette. Cleaning up obsolete or outdated language may be helpful, but in this instance is not necessary for the valid publication of documents in the *Bulletin*. That said, I will recommend to Chairperson DeLiberato that the

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<sup>1</sup> Under a plain reading of section 13.11, the alternate format permitted under subsection (e) operates in isolation and is not tied to an agency's inability to comply with the diskette requirement under subsection (b).

Joint Committee on Documents publish notice in the *Bulletin* identifying a preferred alternate format for submission of documents under section 13.11(d).

2. Regulation #53-9 (IRRC #2861), 1 Pa. Code § 1.4 (Preliminary Provisions, Definitions)

I agree with you that 1 Pa. Code § 1.4 does not need a curative amendment. Section 1.4 contains the definitions for terms as they are used in 1 Pa. Code Pt. I, which pertains to the duties and responsibilities of the Joint Committee on Documents. The act of November 5, 2021 (P.L.427, No.82), in relevant part, amended the definitions of “legal material” and “official publisher” in 44 Pa.C.S. § 702 (relating to definitions) to expand the definition of legal material to include the *Bulletin* and to replace the Bureau with the Joint Committee on Documents as the official publisher of the *Pennsylvania Code* (“Code”), while also adding the Joint Committee on Documents as the official publisher of the *Pa. Bulletin*. As noted in your letter, the definitions of “legal material” and “official publisher” do not appear in 1 Pa. Code Pt. I; therefore, no amendment is required to align any terms defined in 1 Pa. Code Pt. I with the statutory terms defined in 44 Pa.C.S. § 702, as amended under Act 82.

I will, however, suggest to Chairperson DeLiberato that the Joint Committee on Documents amend 1 Pa. Code § 3.44, which requires written permission from the Bureau to reproduce any information published under 1 Pa. Code § Pt. I. 1 Pa. Code § 3.44. As the Bureau is no longer the official publisher of the *Code* or the *Bulletin*, permission to reproduce published material may need to come from the Joint Committee on Documents as the new official publisher.

3. Request for information regarding Joint Committee on Documents regulations

The Committee requested information regarding six Joint Committee on Documents regulations, as follows:

**Regulation #53-1 (IRRC #0101): Effective Date of Regulations**

**Pa. Code cite:** 1 Pa. Code §§ 13.55 and 13.82

**IRRC/committee submission date:** November 2, 1983

**Published:**

Proposed: 13 Pa.B. 3551 (November 12, 1983)

Adopted as proposed: 14 Pa.B. 3864 (October 20, 1984)

**Summary:** Allows for regulations to be effective before the date of publication in the *Pennsylvania Bulletin*. Before publication, the Legislative Reference Bureau will file documents for public inspection upon preliminary examination and processing, rather than the day before publication.

**Summary of input:** None received

**Date regulation approved:** December 2, 1983

**Updates:** None

**Regulation #53-3 (IRRC #0439): Statements of Policy**

**Pa. Code cite:** 1 Pa. Code §§ 1.4, 3.21, 3.25, 3.26a, 9.54, 9.301, 9.302, 9.303, 13.1, 13.5 and 17.58

**IRRC/committee submission date:** May 5, 1986

**Published:**

Proposed: 16 Pa.B. 1830 (May 24, 1986)

Final: 16 Pa.B. 4648 (November 29, 1986)

**Summary:** Establishes a procedure for identifying and publishing statements of policy, as well as the codification of existing statements of policy.

**Summary of input:**

Comments questioned whether the terms "guidelines" and "interpretations" were intended to represent an exclusive listing of all types of statements of policy.

Comments expressed concern that 1 Pa. Code § 17.58 did not require the Legislative Reference Bureau to bring to the attention of the Joint Committee on Documents disputes concerning the form or format of documents.

Comments questioned whether the validity of unpublished documents under 1 Pa. Code § 17.58 would be subject to review to address the practice of agencies avoiding the regulatory review process by distributing informal documents.

**Date regulation approved:** June 18, 1986

**Updates:** None

**Regulation #53-4 (IRRC #0660) Distribution of Bound Volumes of Official Text**

**Pa. Code cite:** 1 Pa. Code § 5.2

**IRRC/committee submission date:** December 15, 1987

**Published:** Final omitted, 18 Pa.B. 332 (January 23, 1988)

**Summary:** Allows for law schools in Pennsylvania to make written requests to receive bound serial page books.

**Summary of input:** None received

**Date regulation approved:** January 6, 1988

**Updates:** None

**Regulation #53-4 (IRRC #1213) Bulletin and Related Documents Charge**

**Pa. Code cite:** 1 Pa. Code §§ 15.21, 15.24 and 17.34

**IRRC/committee submission date:** July 10, 1991

**Published:**

Proposed: 21 Pa.B. 3229 (July 20, 1991)

Adopted as proposed: 21 Pa.B. 5442 (December 7, 1991)

**Summary:** Due to increases in the costs of production, raises the price of the *Pennsylvania Bulletin* subscription from \$45/year to \$65/year. Increases the costs of other related documents as well.

**Summary of input:** None received

**Date regulation approved:** October 25, 1991

**Updates to regulation:** July 22, 1995: Due to the competitive bidding process that led to the *Pennsylvania Code* and *Pennsylvania Bulletin* being printed and distributed by a private company, the sections in Chapter 15 outlining the price of subscriptions and copies were rescinded. (21 Pa.B. 3229)

**Regulation #53-6 (IRRC #1510): Department of Banking: Automatic Subscriptions**

**Pa. Code cite:** 1 Pa. Code Chapter 15

**IRRC/committee submission date:** December 1, 1993

**Published:**

Proposed: 23 Pa.B. 5805 (December 11, 1993)

Adopted as proposed: 24 Pa.B. 2388 (May 7, 1994)

**Summary:** Removes the automatic subscription provision which supplies the *Pennsylvania Bulletin* and Title 10 of the *Pennsylvania Code* to the Department of Banking.

**Summary of input:** None received

**Date regulation approved:** March 29, 1994

**Updates to regulation:** July 22, 1995: Removed the Insurance Department's automatic subscription, which was the final automatic subscription in the *Pennsylvania Code*. (21 Pa.B. 3229)

**Regulation #53-7 (IRRC #1532): Diskette Requirements**

**Pa. Code cite:** 1 Pa. Code § 13.11

**IRRC/committee submission date:** March 4, 1994

**Published:**

Proposed: 24 Pa.B. 1492 (March 19, 1994)

Final: 24 Pa.B. 6402 (December 24, 1994)

**Summary:** Adds the requirement of a MS DOS formatted diskette for submissions. Also provides for alternative methods of submitting and accepting other formats.

**Summary of input:**

IRRC: Expand on MS DOS and ASCII. Specify that notice of alternate format acceptance be made in the *Pennsylvania Bulletin*. Provide a way for agencies to submit if they cannot meet the diskette requirements.

Department of Environmental Resources: Allow further flexibility for using alternate formats agreed upon by the agency and the Legislative Reference Bureau.

Honorable Nancy Sobolevitch, Court Administrator: Clarify that for local rules, it will be the responsibility of the local judicial district to prepare the diskette.

Department of Transportation: Standardize the diskette format, layout, etc. for all depositing offices.

Department of Public Welfare: Expressed concern that some of their offices would not have the technology needed for this update.

Department of Agriculture: Questioned whether there needs to be a diskette size requirement.

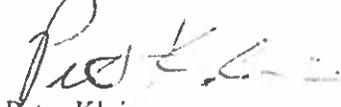
Department of Labor and Industry and Department of Agriculture: Consider returning the diskette with the changes made to proposed and final rulemakings by the Legislative Reference Bureau.

**Date regulation approved:** November 18, 1994

**Updates to regulation:** None

Please do not hesitate to contact us if you require further information.

Sincerely,



Peter Klein  
Counsel, Joint Committee on Documents  
501 N. 3<sup>rd</sup> Street  
641 Main Capitol Building  
Harrisburg, PA 17120  
717-787-5220

Cc: Kim Ward  
President Pro Tempore, Senate of Pennsylvania  
Jay Costa  
Democratic Leader, Senate of Pennsylvania  
Joanna McClinton  
Speaker, House of Representatives  
Bryan Cutler  
Republican Leader, House of Representatives

Jennifer Selber  
General Counsel  
Amy J. Mendelsohn  
Director, Pennsylvania Code and Bulletin  
Reggie McNeil  
Secretary of General Services  
Michelle Henry  
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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

November 22, 2023

Via Electronic and First-Class Mail

The Honorable Al Schmidt  
Secretary  
Pennsylvania Department of State  
410 North Street, Room 3302  
Harrisburg, PA 17120

Re: Review of Existing Regulations Pursuant to a Request of the Pennsylvania House of Representatives State Government Committee

Dear Secretary Schmidt:

I am writing to request your assistance with a review of existing regulations being conducted by the Independent Regulatory Review Commission (IRRC) pursuant to the request of standing committees of the Pennsylvania House of Representatives (Pennsylvania House.) Beginning on September 12, 2022, six standing committees of the Pennsylvania House submitted requests to IRRC asking that we review previously promulgated regulations from various agencies. The enclosed letter from the Pennsylvania House State Government Committee (Committee), dated September 12, 2022, addresses regulations of the Department of State (Department).

Under Section 8.1 of the Regulatory Review Act (Act), IRRC may review any existing regulation which has been in effect for at least three years. If, upon completion of its review, IRRC finds that a regulation is not in the public interest under the criteria outlined in Section 5.2 of the Act, we may submit recommendations to the agency suggesting changes to the regulation or to the General Assembly recommending statutory changes. 71 P.S. § 745.8a.

### *Substantive Committee Concerns*

In its letter, the Committee identified two Department regulations with substantive concerns. First, regulation #16-22 (IRRC #2100) *Campaign Finance Forms* permits reports to be filed on diskettes. The Committee notes that diskette usage may be out of date. Based on our preliminary review, we recommend you review this regulation to consider removing references to diskettes and incorporating new provisions to specify alternate methods of delivery, including electronic delivery, that are acceptable to the Department.

The second Department regulation identified by the Committee as having substantive concerns is #16-33 (IRRC #2407) *Fees for Notary Services*. The Committee notes that as the regulation was enacted 17

years ago, it would not account for the implementation and impact of remote notarization as set forth in Act 97 of 2020 (Act 97). Specifically, Act 97 provides for a remotely located individual to appear before a notary public by means of communication technology. Based on our preliminary review of the regulation and Act 97, we recommend that the Department review the regulation to specifically address remote notarization consistent with Act 97.

#### *Committee Requests for Further Information*

In its letter, the Committee identifies the following four Department regulations for which it requests further information: regulation #16-1 (IRRC #0049) *Names, Trademarks and Service Marks*; regulation # 16-2 (IRRC #0116) *Notary Public Fee Schedule*; regulation #16-4 (IRRC #0877) *Uniform Commercial Code*; and regulation #16-8 (IRRC #1245) *General Revisions*. We ask that in response to the Committee request for additional information on these regulations, the Department provide the following:

- the date each regulation was submitted to IRRC and the standing committees for review;
- a summary of each regulation;
- a summary of the public input on each regulation;
- a summary of legislative and committee input on each regulation;
- the date each regulation was approved;
- the dates and description of any updates to each regulation; and
- the timeline for any anticipated updates to each regulation.

#### *Summary*

As noted above, in fulfilling our obligation under Section 8.1 of the Act, we have determined that amendments to or further information on the regulations identified in the Committee letter are necessary to ensure that the regulations are consistent with the underlying statutes. As you review the regulations cited above and the concerns expressed by the Committee, we encourage you to engage with stakeholder groups or parties affected by these regulations to solicit input and feedback on existing provisions and possible revisions; and any other materials or information you believe may assist us in this matter. Finally, as the Department reviews each of these regulations and compiles information responsive to our requests, we encourage you to do so in coordination with any other affected agencies as well as the regulated community to ensure that all provisions made by statutory changes are properly implemented.

While we are flexible on the timeframe to respond, we would appreciate receiving any information you can provide on or before **January 5, 2024**. If you have any questions regarding this matter, please feel free to contact me. Thank you for your assistance.

Very truly yours,



David Sumner  
Executive Director

Enclosure



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 5, 2024

**Via Electronic and First-Class Mail**

David Sumner  
Executive Director  
Independent Regulatory Review Committee  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101  
[dsumner@irrc.state.pa.us](mailto:dsumner@irrc.state.pa.us)  
[irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)

Dear Mr. Sumner:

The Department is in receipt of your letter dated November 22, 2023, wherein you requested the Secretary of the Commonwealth's (Secretary) assistance with the Independent Regulatory Review Commission's (IRRC) review of certain regulations pursuant to a request by the House State Government Committee (HSGC) under Section 8.1 of the Regulatory Review Act. The Secretary asked that I respond to the letter on his behalf.

Your letter identifies two Department of State regulatory packages that IRRC suggests the Department review: #16-22 (IRRC #2100) entitled *Campaign Finance Forms*, and #16-33 (IRRC #2407) entitled *Fees for Notary Services*. The Department has completed its preliminary review of both. As your letter correctly notes, regulatory package #16-22 (*Campaign Finance Forms*) allows campaign finance reports to be filed on "diskette." To be specific, #16-22 amended 24 Pa. Code § 177.9. The Department agrees with your assessment that the reference to diskettes is outdated. In that regard, the Department will explore updates to this provision as it continues its holistic review of the campaign finance regulations.

As to regulatory package #16-33 (*Fees for Notary Services*), these regulations, amending the Schedule of fees that notaries may charge at 4 Pa. Code § 161.1, were promulgated in 2005 and before the advent of remote notarization. As noted in your letter, Act 97 of 2020 codified remote notarization in 2020, permitting a remotely located individual to appear before a notary public by means of communication technology. The Department has included regulations addressing remote notarization and fees for remote notarization in its draft regulations relating to the Revised Uniform Law on Notarial Acts (RULONA). The RULONA regulations will repeal and replace the provisions of 4 Pa. Code § 161.1 (and thus the content of #16-33 (IRRC #2407)) and authorize Pennsylvania notaries public to charge an additional fee for the communication technology used

for remote notarization. The Department anticipates that the RULONA regulations will be published as proposed in Winter 2024.

In addition to identifying the above regulations as worthy of additional review, you requested information on an additional four regulatory packages. I have provided the requested information below.

#16-1 (IRRC #0049) Names, Trademarks and Service Marks

This regulation received by IRRC in 1983 does not appear to have been completed or published. The IRRC website only contains information that a proposed regulation was received on July 7, 1983 and a public meeting date of July 28, 1983. The IRRC website does not contain a summary of the regulation, a summary of the public input, a summary of legislative and committee input or the date the regulation was approved. The website states “N/A” after “Final Form Regulation Received” and “Published as Final.” This appears to be due to the passage of time – the IRRC website states that the public “will ... see all documents related to individual regulations from IRRC #2500 (circa 2005) and available historical information on regulations dating back to 1999.” [https://www.irrc.state.pa.us/regulations/find\\_a\\_regulation.cfm](https://www.irrc.state.pa.us/regulations/find_a_regulation.cfm)

Additionally, current Chapter 91 of Title 19 of the Pennsylvania Code (relating to Marks and Insignia) was promulgated April 17, 1992, effective April 18, 1992 (22 Pa.B. 1993). This rulemaking relates to Trade and Service Marks (Subchapter A), Insignia (Subchapter B) and Marks Used with Articles or Supplies (Subchapter C). There is no indication on the Pennsylvania Code website that any prior rulemaking was repealed or reserved.

Due to the Department’s record retention schedule, it no longer retains any files with the information about this 1983 rulemaking. The Office of General Counsel’s retention schedule for regulations is four years. The Department of State regulation files are retained for 20 years.

Therefore, it is the Department’s conclusion that this regulatory package was never completed or was superseded by the 1992 rulemaking.

#16-2 (#IRRC 0116) Notary Public Fee Schedule

This regulation was published February 10, 1984, effective February 11, 1984 (*see* 14 Pa.B. 431). The Pennsylvania Code citation is 4 Pa. Code § 161.1. It has already been replaced by 16-33 (IRRC 2407) Fees for Notary Services in 2005. See discussion above.

The IRRC website does not contain information on the date this regulation was submitted to IRRC and standing committees for review, a summary of the regulation, a summary of the public input, a summary of legislative and committee input or the date the regulation was approved. This appears to be due to the passage of time – the IRRC website states that the public “will ... see all documents related to individual regulations from IRRC #2500 (circa 2005) and available historical information on regulations dating back to 1999.” [https://www.irrc.state.pa.us/regulations/find\\_a\\_regulation.cfm](https://www.irrc.state.pa.us/regulations/find_a_regulation.cfm)

Due to the Department's record retention schedule, it similarly no longer retains any files with the information about this 1984 rulemaking. The Office of General Counsel's retention schedule for regulations is four years. The Department of State regulation files are retained for 20 years.

The Department has provided the dates and description of any updates to this regulation above, as well as the estimated timeline for updates.

#16-4 (IRRC #0877) Uniform Commercial Code

This rulemaking reserved all of 19 Pa. Code Chapter 55 (§ 55.1 - § 55.101(1) – (3)) as a final omitted regulation on September 8, 1989, effective September 9, 1989 (*see* 19 Pa.B. 3818). The reserved Chapter 55 had been adopted June 22, 1973, effective June 23, 1973 (*see* 3 Pa.B. 1164).

The remaining regulation relating to Uniform Commercial Code is at 4 Pa. Code § 95.101 (relating to Official forms). This rulemaking was adopted April 17, 1992, effective April 18, 1992 (*see* 22 Pa.B. 1993) and remains current as to the three forms specified. The Department has no other Uniform Commercial Code (UCC) regulations.

Due to the Department's record retention schedule, it no longer retains any files with the information about this 1989 rulemaking. The Office of General Counsel's retention schedule for regulations is four years. The Department of State regulation files are retained for 20 years.

Due to the record retention schedule cited above, the Department is unable to provide the date the regulation was submitted to IRRC and standing committees for review, a summary of the regulation, a summary of the public input, a summary of legislative and committee input or the date the regulation was approved, other than what can be gleaned from the Pennsylvania Bulletin.

The Department does intend to promulgate modern UCC regulations using most recent International Association of Commercial Administrators (IACA) Model Rules. The timeline for this rulemaking is dependent upon IACA adopting an updated version of the Model Rules (anticipated summer 2024) and the Department bringing on additional resources to assist with the drafting and promulgation of further rulemaking.

#16-8 (IRRC #1245) General Revisions

This regulation was published April 17, 1992, effective April 18, 1992 (*see* 22 Pa.B. 1993). The affected portions of the Pennsylvania Code are: 19 Pa. Code Chapter 1; 19 Pa. Code Chapter 3; 19 Pa. Code Chapter 11; 19 Pa. Code Chapter 13; and 19 Pa. Code Chapter 17.

The IRRC website states that this rulemaking was submitted to IRRC in final form on February 12, 1992 and "approved by law" on March 4, 1992. There appears to have been a delay in publication, such that the provisions of 19 Pa. Code chapters 1, 3, 11, 13 and 17 were amended April 17, 1992, effective April 18, 1992.

Mr. David Sumner  
January 5, 2024  
Page 4

Due to the Department's record retention schedule, it no longer retains any files with the information about this 1992 rulemaking. The Office of General Counsel's retention schedule for regulations is four years. The Department of State regulation files are retained for 20 years.

Due to the record retention schedule cited above, the Department is unable to provide the date the regulation was submitted to IRRC and standing committees for review, a summary of the regulation, a summary of the public input, a summary of legislative and committee input or the date the regulation was approved, other than what can be gleaned from the *Pennsylvania Bulletin*.

The Department does intend to promulgate updated regulations for the Bureau of Corporations and Charitable Organizations, which would reflect changes in the Associations Code relating to business organization filings. The timeline for this rulemaking is dependent upon the Department bringing on additional resources to assist with the drafting and promulgation of further rulemaking.

###

I trust this satisfies your request as it pertains to the regulations under review. Should you require anything further of the Department of State, please let me know.

Sincerely,



Kathleen M. Kotula  
Chief Counsel

cc: The Honorable Al Schmidt, Secretary of the Commonwealth