RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 23 AND 27]

School Immunizations; Communicable and Noncommunicable Diseases

The Department of Health (Department), with the approval of the State Advisory Health Board (Board), amends Chapter 23, Subchapter C (relating to immunization) and § 27.77 (relating to immunization requirements for children in child care group settings) to read as set forth in Annex A.

A. *Purpose and Background*

The final-form rulemaking amends immunization requirements that children seeking to enter and attend school in this Commonwealth shall meet, and is based upon recommendations of the Advisory Committee on Immunization Practices (ACIP), an advisory committee of the Centers for Disease Control and Prevention (CDC).

The final-form rulemaking is intended to control the spread of diseases in schools, which are known to be ideal settings for the transmission of communicable diseases. Requiring immunity before a child enters school in 1st grade or kindergarten, or before the child is permitted to attend a school in this Commonwealth, protects that child before entering an environment which readily lends itself to the transmission of disease. Further, ensuring that children are appropriately immunized carries with it advantages for the public as a whole, including other high-risk populations, as well as for the child. There is less chance of other persons contracting a highly infectious disease if children are vaccinated and less chance of outbreaks of contagious diseases occurring.

The final-form rulemaking combines the immunization requirements in § 23.83 (relating to immunization requirements) for school entry into kindergarten or 1st grade with immunization requirements for school attendance in all grades and adds two new immunization requirements for entry into the 7th grade. The Department reviewed the recommendations of the CDC's ACIP and determined that certain ACIP recommendations serve to meet the needs of the Commonwealth with respect to requirements for school immunizations. The final-form rulemaking requires that students be immunized with the hepatitis B vaccine (previously required for entry into either kindergarten or 1st grade and entry into the 7th grade) before entering school. The final-form rulemaking requires that students entering the 7th grade be immunized with the tetanus, diphtheria and acellular pertussis (TdaP) vaccine, if at least 5 years has elapsed since their last tetanus and diphtheria-containing immunization. The final-form rulemaking also requires that children entering the 7th grade be immunized with the meningococcal conjugate vaccine (MCV).

The final-form rulemaking also institutes ACIP recommendations regarding an additional dose requirement for mumps vaccine and for varicella vaccine. The existing requirement for varicella immunity upon school entry and for entry into the 7th grade will now be an all-grades requirement.

Further, the final-form rulemaking also clarifies what immunization requirements apply to children under 5 years of age attending child care group settings located in a school. The final-form rulemaking also makes it clear that children in a school district operated prekindergarten program, early intervention program operated by a contractor or subcontractor (this includes districts, intermediate units and private vendors) and private academic preschool are required to obtain age-appropriate immunizations as a condition of attending those programs.

Finally, the final-form rulemaking adds a 4-day grace period for vaccine administration, also in accordance with recommendations of the ACIP, and amends the Department's requirements for school reporting of immunizations in § 23.86 (relating to school reporting).

The Department published the proposed rulemaking at 38 Pa.B. 750 (February 9, 2008) and provided a 30-day public comment period. Because the title of the proposed rulemaking failed to include reference to school immunization and only mentioned communicable and noncommunicable diseases, and this could have created confusion among potential commentators, the Department extended the public comment period an additional 2 weeks. (See 38 Pa.B. 1150 (March 8, 2008).) The Department received comments from two commentators and from the Independent Regulatory Review Commission (IRRC). The comments and the Department's responses appear in the summary of this final-form rulemaking.

B. *Summary*

General comments

IRRC and one commentator raised the question of whether the Department could simply adopt the ACIP's recommendations regarding vaccinations by reference and avoid the need for the Department's updating of regulations every time the ACIP makes a change to its recommendations. If the Department chose not to do so, IRRC recommended that the Department carefully consider the commentator's other recommendations and warned that IRRC would review the Department's responses in determining whether or not the regulation met the criteria in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Department considered this particular comment with regard to the ACIP's recommendations on several previous occasions, and after reviewing its previous responses, will not revise the regulations as the commentator has requested.

In determining what immunizations to require for school attendance, the Department reviews the ACIP's guidelines and recommendations. The Department does not, however, typically or uniformly accept or adopt the ACIP's recommendations, either for the immunizations the Department will require or for the standards applicable to those immunizations. The ACIP's recommendations are helpful and often definitive but may not take into consideration issues that may be important to the adopting state jurisdiction. Because the ACIP's recommendations are based on the purely public health reason of protecting children from every possible disease, the ACIP does not take into account the possibility of community reaction, nor should it. Practitioners, too, seeking to recommend the best health practices to their patients, are not constrained by the need to accept and review public

comment regarding the efficacy and necessity of obtaining a particular vaccine. The Department, through these regulations, however, is in the position of mandating that a child obtain a particular disease vaccine or be denied access to the educational system for some period of time. To that end, the Department will allow for the public to review and present its concerns regarding a mandate such as this. To have adopted the ACIP recommendations without further review would have mandated the provision of human papillomavirus (HPV) to all boys and girls attending school without allowing for public comment. Regardless of one's position with respect to the efficacy of, and necessity for, receiving this vaccine, it shall be acknowledged that this particular vaccine has given rise to some controversy and concern in the public. In addition, there are groups of individuals who strongly disagree with immunization of children. Regardless of one's view of this issue, in the context of a regulation that requires immunizations for school attendance, rather than recommending them for personal health reasons, these persons, too, should have a meaningful opportunity to voice their concerns.

Adopting ACIP recommendations upon their issuance would raise other issues. Some immunizations for diseases that are not prevalent in this Commonwealth would involve unnecessary cost to patients. For example, with respect to the hepatitis A vaccine, although the ACIP is careful to recommend vaccination against hepatitis A in states that are considered to be at high risk, a simple adoption of ACIP requirements would be insufficient to fully explain to the regulated community, that is, children, parents and guardians, and schools, whether the immunization is or is not required. These persons are unlikely to know that this Commonwealth is, in fact, not considered to be a high risk state for this disease due to low prevalence of hepatitis A disease. This would necessitate additional guidance from the Department in some form.

While the issuance of additional guidance does not, at first glance, appear to be overly burdensome, it is not the effect on the Department that raises the issue here. The Department attempts to make its school immunization regulations as simple as possible to aid schools and school nurses in their responsibilities to make certain only children who are appropriately vaccinated are attending schools. To this end, the Department attempts to limit the number of communications with respect to existing requirements. The ACIP issues recommendations three times a year, however, and adopting ACIP recommendations wholesale would require schools and school nurses to review children for the appropriate vaccine requirements at least 3 times each year to ensure compliance with recommended changes.

Adopting the ACIP's recommendations, without being able to review and affirmatively accept each one, with whatever modifications deemed necessary, would inhibit the flexibility needed by the Department to apply its and the Board's expertise to the question of what immunizations are appropriate as a condition of school attendance. This requires a balancing of the importance of the immunization to children in this Commonwealth preventing morbidity and mortality, versus the burden the requirements would place upon schools, parents and the community.

In fact, the General Assembly has recognized the Department and the Board as authoritative on the issue of immunizations. In section 16(a)(6) of the Disease Prevention and Control Law of 1955 (35 P. S. § 521.16(a)(6)), section 2111(c.1) of The Administrative Code of 1929 (71 P. S. § 541(c.1)) and section 1303 of the Public School Code of 1949 (24 P. S. § 13-1303a(a)), the General Assembly authorized the Department, with the Board, without reference to the ACIP, to create a list of diseases against which children shall be immunized. To cede this authority to create a list of diseases to a Federal advisory committee that does not have rulemaking authority or responsibility, and whose recommendations are not subject to a rigorous rulemaking process prior to issuance, is not in accord with the General Assembly's direction to the Department. It is the Department's responsibility, with the approval of the Board and the necessary State regulatory review bodies, including the General Assembly, to determine when and how to add required immunizations to the list.

The Department may review standards from groups with expertise in the matters the Department is seeking to regulate and may consult with those groups as well. In fact, the Department has done, and continues to do, just that in many areas falling under its purview. When, however, the General Assembly delegated a responsibility to the Department, the final execution of that responsibility rests with the Department under the law. Therefore, the Department may review and approve standards recommended by independent entities, but cannot, however, adopt future unspecified and unknown standards and guidelines.

Then, too, there is a question as to whether it is beneficial to allow some time to pass before accepting an ACIP recommendation as a mandate for school attendance. There may be problems with a vaccine that the ACIP has not anticipated. The Department notes that, although the vaccine against the rotavirus was not recommended by the ACIP for the age group in question here, within 4 months of the ACIP's recommendation regarding that immunization, problems arose and children suffered severe injuries and death from twisting of the bowel, attributable to the vaccine. If this were to occur following the adoption of an immunization mandate for school attendance, the public's trust in State government to properly protect them could be irreparably damaged.

The Department understands the concern that the regulatory process lags behind current thinking of the scientific community. The Department is willing, following the implementation of this final-form rulemaking, to invoke a stakeholder process to consider alternatives that may expedite the regulatory process, while at the same time preserving the Department's and the Board's careful review of proposed amendments to immunization requirements for school attendance.

New vaccinations continue to be developed and recommendations of knowledgeable bodies change from day to day. What remains a constant, however, is the Department's commitment to protect the health and safety of the children of this Commonwealth by ensuring that it exercises its discretion and expertise to review recommendations and only require the most appropriate immunizations for school attendance in this Commonwealth. The fact that this may take some time only means that these vaccinations are not required for a child's attendance at school immediately upon their recommendation by the ACIP. It does not prevent a physician from recommending and offering the vaccination to his patients when the recommendations are issued. The Department would rather be cautious in the exercise of its discretion than create additional burden to the citizens of this Common-

wealth by abdicating its responsibilities to take the most efficient and practical means necessary to prevent and control the spread of disease.

CHAPTER 23. SCHOOL HEALTH

Subchapter C. IMMUNIZATION

§ 23.83. Immunization requirements.

Subsection (a). Duties of a school director, superintendent, principal or other person in charge of a public, private, parochial or nonpublic school.

IRRC noted that the proposed rulemaking did not specifically address whether the requirements of this subsection would apply to charter and cyber schools. The Public School Code of 1949 (24 P. S. §§ 1-101—27-2708), upon which the final-form rulemaking is based, in part, states that "school directors, superintendents, principals, or other persons in charge of any public, private, parochial, or other school including kindergarten" must ascertain whether the immunization has occurred. The statute is sufficiently broad enough to include cyber and charter schools, without the need for that statement appearing in this section. Since this section is being amended at this time, the Department, however, does not have an objection to adding language that would make it clear that persons in charge of cyber and charter schools should also ascertain whether a child is in compliance with the appropriate immunization requirements and that the immunizations required in § 23.83(b) for school attendance are also required for children in cyber and charter schools. Children in these educational settings are exposed to other children and placed at risk for contracting or spreading a vaccine-preventable disease. These children are able to participate in extra-curricular activities, just as children who attend "regular" schools do, and have regular contact with adults, who may be susceptible to contracting diseases like pertussis. The definition of "attendance at school" in § 23.82 and §§ 23.83(a) and (c) and 23.86(a) have been revised to include a reference to cyber and charter schools.

IRRC recommended that the Department add language to subsection (a) specifically telling persons required by law to ascertain whether a child was in compliance with the appropriate immunization requirements how to make that determination. The commentator suggested that the Department add the language in § 27.77 and require that parents provide a written verification from a physician, the Department or a local health department be provided to the school. In the alternative, the commentator recommended that the Department include the language that the Department used with respect to proof of varicella immunity with each of the immunizations required.

The Department has not revised this subsection as recommended. The language that appears in the Department's regulations regarding child care group settings was written because there was not a requirement prior to the adoption of those regulations in 2002 that a child care group setting require certain vaccinations or how that entity should verify vaccinations. Schools, however, are governed by the regulations of the Department and the Department of Education. (See 22 Pa. Code §§ 11.20 and 51.13 (relating to nonimmunized children; and immunization).) Section 23.85 (relating to responsibilities of schools and school administrators) discusses how schools are to carry out these responsibilities. Section 23.85(a) requires a school administrator to obtain a certificate of immunization from the child's parents or a history of the child's immunization and requires that the information be stored in a database. In general, the information is kept in the child's medical record; schools are required to keep medical records of students, independently of the Department's regulations regarding school immunizations. (See section 1402 of the Public School Code of 1949 (24 P. S. § 14-1402), regarding health services. While the need existed in the regulations regarding child care group settings to explain how vaccinations would be verified, that requirement is already in place regarding schools and does not need to be reiterated in this final-form rulemaking.

Further, with respect to the language included with the varicella vaccine regarding verification of varicella immunity, the language could not be adopted for each immunization listed in subsection (b) because of the nature of the disease and the response of the public to that disease. Chickenpox (varicella) is often considered by parents to be a "rite of passage" of childhood, a disease that is not dangerous and need not be treated like a more "serious" disease would be, for example, like measles. Children with varicella are often not taken to the doctor's office. In addition, at the time the varicella regulation was first promulgated the vaccine had been relatively newly licensed in the United States. The Department, taking these circumstances into consideration, allowed for immunity to be verified in different ways and not simply by the recording of the administration of the vaccine. One way, for example, is through a statement of the parent that the child has had the disease. This language would not be applicable and the same considerations would not hold true, for instance, in the case of a disease like tetanus or diphtheria.

IRRC suggested that the Department cross-reference section 1303 of the Public School Code of 1949 in subsection (a) to clarify the statutory exemptions and penalties involved.

The Department added a cross-reference as recommended. With respect to the statutory exemptions, however, it should be noted that those are already included in § 23.84 (relating to exemption from immunization).

Subsection (b). Required for attendance.

IRRC and one other commentator raised the question of combination vaccines. The commentator suggested that the Department use combination vaccines for several of the immunizations required. IRRC stated that the commentator made a compelling argument for the use of combination vaccines. IRRC requests that the Department explain why the proposed rulemaking did not include a requirement for combination vaccines.

The commentator strongly urged the Department to encourage the use of combination vaccines when available and to encourage the use of the correct vaccine for diphtheria, tetanus and pertussis. According to the commentator, children under 6 years of age should receive five doses of DTaP and adolescents 11 years of age through 18 years of age should get one booster dose of TdaP based on the CDC guidelines. This would eliminate confusion between the two different vaccines.

The Department supports the commentator's position that combination vaccines are preferable because of the reduction in cost by eliminating multiple visits, stocking and storing multiple vaccines and stress on the child. The Department's existing regulations neither encourage nor discourage the use of combination vaccines; it should be noted that many vaccines are not available in this Commonwealth or United States as single antigen vaccines. The Department believes that health care professionals, if they have single antigen vaccines available to

them, will take these issues into consideration in deciding which vaccine to use. Given the concern expressed by commentators, however, the Department has decided to revise this subsection to add language acknowledging that a combination vaccine is an acceptable vaccine for purposes of school attendance, as well as a single antigen vaccine. The Department added this language even in situations when a combination vaccine currently does not exist to anticipate the continuing development of these vaccines. The Department agrees with the commentators and strongly encourages the use of combination vaccines when appropriate and available.

The Department cannot, however, state that single antigen vaccines will not be considered acceptable for school attendance. In some instances, for example, in the case of the hepatitis B vaccine, a combination vaccine is not presently available for school age children. There is a combination vaccine for hepatitis B available; it is, however, only licensed for children 18 years of age and older. In addition, because single antigen vaccines are still given in many other countries, there are children coming to school in this Commonwealth with single antigen measles and mumps vaccines that should be counted as valid doses. If regulation requires that only combination vaccines are counted as valid doses, these children would have to be revaccinated unnecessarily at additional cost.

With respect to the comment regarding the differences between TdaP and DTaP, the level of specificity the commentator is recommending in final-form rulemaking regarding TdaP and DTaP goes beyond what the Department feels is appropriate for regulation in this area, given the possible encroachment on professional judgment resulting from a regulation such as this. The Department is not in a position to substitute its regulatory authority for the professional judgment and knowledge of a health care practitioner. The Department believes that health care practitioners following accepted standards of practice and exercising their professional judgment do not need to be instructed by the Department through regulation of which vaccine to administer and when.

One commentator stated that the commentator felt that it would be more beneficial for the Department to require TdaP and MCV for entry into the 8th grade than the 7th grade. This would allow additional time for students to become vaccinated and prevent exclusion of those students who fail to obtain the required vaccinations. The commentator based this recommendation on the fact that out of a class of 500 6th graders in what the commentator classified as a middle class school district there were only 100 students who received the MCV and 176 who received the TdaP. Further, as a school nurse, the commentator sent letters to parents explaining the Department's proposed rulemaking which would require those vaccinations and did not receive a significant response.

The Department considered this comment and did not revise this subsection. The Department is unable to draw a conclusion from the parents' lack of response to the commentator's letter. Further, the vaccinations in question were not required for entry into 7th grade at the time the commentator informally surveyed the 6th grade class and sent a letter to parents.

In addition, in 2007, in preparation for the eventual implementation of this final-form rulemaking, the Department itself conducted a survey of 160 schools in selected school districts, including Philadelphia and Allegheny Counties. The survey showed that 11% of 7th graders had, at that point, received the MCV, while 16% received the TdaP, without the existence of a requirement that children have these vaccines for entry into the 7th grade. In setting entry into the 7th grade as the time in which children are required to have the MCV and the TdaP, the Department is following the ACIP guidelines with respect to those vaccinations. Nothing in its study or the commentator's informal survey leads the Department to the determination that to implement the vaccination in accordance with the ACIP requirements would be improper or would create hardship on students. It should also be noted that the health departments of Allegheny and of Philadelphia Counties require meningococcal vaccine for school students. The health departments of Allegheny and of Philadelphia Counties are local health departments with the authority to promulgate their own regulations, so long as those regulations are more stringent than those of the Department (See section 16(c) of the Disease Prevention and Control Law of 1955 (35 P. S. § 521.16(c)).) As of the 2009-2010 school year, the Allegheny County Health Department requires the vaccine for students entering 7th through 12th grades; as of the 2008-2009 school year, the Philadelphia Department of Public Health requires students entering 6th grade to have the vaccine.

Questions were also raised concerning the cost of the MCV to families whose children will now be required to obtain this vaccine before entering the 7th grade. Certain insurance plans are required to cover provision of the MCV, since it is a recommendation of the ACIP, and was included in a notice published by the Department in accordance with the Childhood Immunization Insurance Act (40 P. S. §§ 3501—3508) and its accompanying regulations in 31 Pa. Code §§ 89.801—89.809 (relating to childhood immunization insurance). In addition, the vaccine is covered for vaccine-eligible children enrolled in the Federal Vaccines for Children Program. (See section 1928 of the Social Security Act (42 U.S.C.A. § 1396s).) Lastly, for children not covered by either of these programs, the Department makes vaccine, which it obtains through a Federal grant, available through "catch-up" programs at schools and through its State health centers. It has done so in the past with respect to hepatitis B vaccine and varicella vaccine and will do so with respect to the MCV, TdaP and the second dose of varicella.

In connection with cost concerns, an issue has also been raised regarding the College and University Student Vaccination Act (act) (35 P. S. §§ 633.1—633.3). The College and University Student Vaccination Act requires students entering college and living in dormitories to have a one-time vaccination against meningitis. Concerns were raised that students required to receive the MCV in 7th grade under the Department's regulations would then be forced to have a booster shot prior to entering college to comply with the College and University Student Vaccination Act. Under the ACIP recommendations, MCV is specifically recommended for children 11 or 12 years of age and is only recommended for 13 years of age through 18 years of age if not previously vaccinated. (See 58 MMWR 1042 (September 25, 2009).) Secondly, booster shots are only recommended for children who remain at increased risk after 5 years. The recommendations specifically state that persons whose only risk factor is living in on-campus housing are not recommended to receive an additional dose. (See 58 MMWR 1042 (September 25, 2009).) Therefore, under these recommendations, there would not be a requirement for an additional vaccine at college entry if the child is vaccinated in the 7th grade. It should also be noted that, depending upon the child's insurance coverage and age at the entry to college, there is a greater possibility of the vaccine being covered by

private insurance or a government program for the child if it is received at entry into 7th grade than at entry into college.

IRRC and one other commentator asked whether the Department had considered adding requirements for immunization for hepatitis A, rotavirus, haemophilus influenzae type b and HPV to its list of diseases against which children must be immunized prior to school attendance or entry. The Department has not changed the final-form rulemaking in response to this comment.

The Department did consider the addition of hepatitis A to the list. It determined against including that requirement, since this Commonwealth is not considered a high risk state for that disease.

The Department began consideration of what action to take with respect to vaccination for HPV when that vaccination became licensed several years ago. The Department formed the Cervical Cancer Task Force to discuss and make recommendations regarding that particular vaccination. At this time, there has not been a recommendation for the addition of HPV to the list.

The Department has not added haemophilus influenzae type b or rotavirus to the list since this final-form rulemaking deals with school attendance. Typically, children begin school at 5 years of age and rotavirus and HIB are vaccines licensed for children under 5 years of age .

One commentator also requested that the Department give preference to the injectible inactivated polio vaccine, since the oral polio vaccine is no longer considered the standard of care.

The Department has not revised this subsection. Oral polio vaccine is no longer available in the United States. The Department will, however, continue to take into consideration the possibility that children coming from other countries may have had the oral vaccine. The subsection must allow for this to be counted as a dose. Further, the Department relies upon health care practitioners to follow the standard of care demanded by their professional judgment and licensure requirements.

IRRC raised the question that the Department continually uses the phrase "properly spaced dose" in subsection (b) without explaining where the definition of "properly spaced dose" is to be found. The commentator recommended that the Department include the standard in the final-form rulemaking.

The Department has not revised the regulation. This language is not new to the school immunization regulations, although it does appear in the new language regarding mumps, hepatitis b, and varicella. (See subsection (b)(6)—(8)). Physicians and other health care practitioners who have worked with these regulations have never raised a question as to its meaning prior to this time. The term "properly-spaced dose" refers to the standard of practice followed by practitioners whose license permits them to administer vaccinations and is unique to each vaccine series. Practitioners determine appropriate dosing by reference to guidelines developed by their medical associations and other experts in the field of immunizations. The Department does not have the authority to define the standard of practice for licensed practitioners.

Further, within the context of the regulations, the term, "properly-spaced dose" is intended to identify which doses may be counted by the Department for audit purposes and for record checking. From the Department's perspective, a dose which is not a "properly-spaced" dose under the CDC's guidelines means that the Department will not count that dose towards the number of children receiving vaccinations, which is required to be reported to the CDC. The information may also be used in the event of an outbreak of a vaccine reportable disease. In that case, a child not having received properly-spaced doses (given at too early of an age or at less than a minimum interval between doses for that vaccine) may need to be excluded from attendance by the school. These regulations, however, do not provide for punitive action against either the school or the practitioner.

Subsection (b)(1). Diphtheria.

Subsection (b)(2). Tetanus.

One commentator recommended that the language for diphtheria and tetanus be changed from requiring one dose on or after the 4th birthday to the final dose being administered at 4 years of age. This is intended to clarify that the initial three doses have already been given and that the booster shot should be administered at 4 years of age.

The Department agrees that the language of the paragraphs should be changed to reflect that the three initial doses should occur prior to the 4th birthday. The Department believes that the language suggested by the commentator, that the final dose be given "at 4 years of age" is too restrictive, and could be read to mean that the dose must be given on the 4th birthday. Therefore, the Department has revised the paragraph to read "The fourth dose shall be administered on or after the 4th birthday." This takes into consideration the commentator's concern that the paragraphs lack clarity regarding when the first three doses may be given and requires that the fourth and final dose be given on or after the child turns 4 years of age.

Subsection (b)(4). Measles (rubeola).

Subsection (b)(5). German measles (rubella).

IRRC questioned the Department's removal of the requirement in subsection (b)(4) and (5) that serological evidence showing antibodies to rubeola (subsection (b)(4)) or rubella (subsection (b)(5)) determined by the hemagglutination inhibition test or a comparable test be the specific type of testing used as an alternative to evidence of vaccination. The Department has changed that requirement to allow acceptance of "laboratory testing" as evidence of immunization. IRRC recognized that, as the Department stated in the preamble to proposed rulemaking, the Department's intention was to allow for changing technology to be recognized, but questioned whether the requirement had now become too broad. IRRC asked what type of laboratory testing the Department would accept and whether the testing procedure and laboratory would be required to be approved or accredited by an appropriate medical authority.

It is the Department's intent to allow for the most current testing to be utilized, and the language that has been removed from these paragraphs would have prevented that from occurring. In considering this comment, the Division of Immunization sought the advice of the Department's Bureau of Laboratories (BOL). There are numerous tests on the market for detection of Rubella and Rubeola antibodies. The majority are enzyme linked immunoabsorbent assay tests, although there are other methods available. These tests could all be considered "comparable" to the hemagglutination inhibition test. Use of any of these tests would require licensure for nonsyphilis serology under The Clinical Laboratory Act (35 P. S. §§ 2151—2165) and certification for general

immunology under the Federal Clinical Laboratory Improvement Amendments of 1988 (CLIA).

Under the CLIA requirements, a laboratory offering one or more of these tests would require a CLIA certificate of compliance (the agency inspecting the laboratory would be the CLIA state agency, which in the Commonwealth is the BOL) or a certificate of accreditation (the agency inspecting the laboratory would be a Federally-approved accrediting agency). CLIA certified and state permitted laboratories are inspected at least every 2 years. In addition, laboratories shall participate regularly and successfully in an external proficiency testing program (usually three times per year). The Department has revised subsection (b)(4) and (5) to clarify that the laboratory performing the testing must have the appropriate certification.

Once a laboratory meets these requirements, it may perform testing to determine immunity for rubella and rubeola without any additional approvals by the Department.

Subsection (b)(8). Chickenpox (varicella).

IRRC asked the Department to clarify how it determined that the school year 2010-2011 allowed a reasonable amount of time for children to meet the requirement for the two dose varicella vaccine.

In choosing the time frames for varicella compliance in the proposed rulemaking, the Department drew on its experience in phasing in vaccine requirements. The Department did not wish to delay an unduly long period of time in creating an all grades requirement, since there is a need for a second dose to ensure that children are appropriately immunized, and not either contracting or spreading a serious disease. The varicella vaccine has been licensed since 1995 and a one dose requirement of the vaccine for school attendance has been in place since 2001. Most children, therefore, already have received one dose of the vaccine. Further, the recommendation for a second dose of varicella was issued by the ACIP in 2007 and many doctors are already giving the second dose as a result of these recommendations. Because the school immunization regulations of the Department and the Department of Education provide that a child may attend school so long as he has one dose and then receives subsequent doses within an 8 month provisional period, the Department did not believe that the proposed amendment would cause hardship to children by causing their immediate exclusion from school. (See § 23.83(e) and 22 Pa. Code §§ 11.20 and 51.13.)

After a request to allow additional time for school nurses and for children, parents and guardians to prepare to administer the new vaccine requirements, however, and given that the final-form rulemaking will most likely not be effective until the very end of school year 2009-2010, making that preparation more difficult for schools, the Department has agreed to delay implementation of this final-form rulemaking until school year 2011-2012. This will provide ample time for schools to make families aware of the new immunization requirements and will provide ample time for families to obtain the required immunizations before the school year starts in the fall of 2011. Because of this change in implementation date, the Department has removed the phase-in requirements for varicella from the final-form rulemaking.

IRRC also recommended adding the qualifier "or older" to proposed subsection (b)(8)(i)(A), which required the first dose of the vaccine to be administered at 12 months of age, since the existing regulation contained that language. The Department agrees and has revised subsection (b)(8)(i)(A) to include the recommended language.

IRRC requested that the Department explain the difference between subsection (b)(8)(i)(B) and (C).

The Department revised the regulation to remove the phase-in requirement and deleted subsection (b)(8)(i)(B) and (C). Children attending school will be required to have two properly-spaced doses of varicella vaccine, the first dose administered at 12 months of age or older.

§ 23.83. Immunization requirements.

Subsection (e). Prekindergarten programs, Early Intervention programs' early childhood special education classrooms and private academic preschools.

The Department sought the expertise of the Department of Public Welfare (DPW) and the Department of Education with respect to the language included in this subsection. The DPW's Office of Childhood Development and Early Learning provided clarification regarding the types of programs and the age of the children that are intended to be covered by this subsection. The Department revised the language and title of the subsection to reflect those clarifications.

Subsection (f). Grace period.

IRRC requested that the final-form rulemaking explain who will monitor the 4-day grace period and what the consequences are for exceeding it.

The implementation of a 4-day grace period for the provision of doses of vaccine was instituted by the Department through a final-form rulemaking published at 32 Pa.B. 1305 (March 9, 2002). The grace period was intended to allow for the acceptance of vaccinations as valid that were given at a time less than or equal to 4 days prior to the minimal interval or age limit for a valid dose of vaccine administration. A vaccine given outside this grace period would result in that dose being considered an invalid dose and could result in a child not having the necessary immunizations for the purpose of school attendance. A vaccine counted as an invalid dose could cause the child to be excluded from school if he did not meet the requirements for provisional admission. (See § 23.85 and 22 Pa. Code §§ 11.20 and 51.13.)

With respect to monitoring, the Department does random school audits and checks for compliance with dosage requirements. School nurses and administrators are also aware of these requirements and monitor the immunization status of children.

§ 23.85. Responsibilities of schools and school administrators.

The Department received comments on this section, although it did not propose substantive changes to this section. This section previously allowed provisional admittance if a child had received one dose of each antigen of a vaccine. Since a vaccine like the MCV only requires one dose to complete the vaccine, concerns were raised that it was possible that a child failing to receive either the MCV or TdaP by school entry in school year 2010-2011 would be excluded immediately without a provisional period allowed.

In response to these concerns, the Department added language to this section to clarify that a child may be provisionally admitted to school in a situation in which he needs a single dose vaccine (like the MCV or TdaP) as well as when the child is missing a multiple vaccine series, even if the child fails to obtain the necessary dose of the single dose vaccine. The Department also changed

the effective date of the final-form rulemaking to August 1, 2011, so that it will be implemented for school year 2011-2012 in the hopes that this will limit the number of children needing provisional admittance for failure to obtain these vaccines.

§ 23.86. School reporting.

Although the Department did not receive comments on this section, in reviewing the proposed rulemaking, the Department determined that nonsubstantive changes were necessary in subsection (d)(6) and (7). The Department amended these paragraphs to mirror language in earlier paragraphs. The Department also amended subsection (e)(3) to clarify that the paragraph does not require reporting on antigens given to each individual child, but, rather requires reporting on the number of doses of each individual antigen given in each grade level.

CHAPTER 27. COMMUNICABLE AND NONCOMMUNICABLE DISEASES

Subchapter C. QUARANTINE AND ISOLATION

Communicable Diseases in Children and Staff Attending Schools and Child Care Group Settings

§ 27.77. Immunization requirements for children in child care group settings.

One commentator recommended that the fourth dose of necessary vaccines should be given between 4 years of age and 6 years of age, since this reflects the recommendations of the ACIP, the American Academy of Pediatrics and the American Academy of Family Practitioners. The commentator noted that this would alter the language in § 27.77(d)(1)(i) and (ii).

The Department did not made changes in response to this comment. This final-form rulemaking is not intended to set out general rules of medical practice for the provision of immunizations to children. The Department's authority in promulgating this final-form rulemaking is to set out a list of diseases against which children must be immunized for entry to and attendance at school. Therefore, the regulations are written to set out requirements for school attendance.

Because the age of children attending a school-based setting is changing, and many children younger than the typical age for school entry at kindergarten (5 years of age), are found in school-based settings, the Department found it necessary to clarify its regulations regarding immunizations for children. This could, potentially, create confusion with the Department's separate set of regulations promulgated under a different authority addressing the issue of children in child care group settings. See § 27.77. To ensure that confusion does not continue, the Department also revised § 27.77(d) to ensure that children attending kindergarten, elementary or higher school who are 5 years of age or older are not subject to those child care group setting requirements and are required, even in a child care group setting, to receive the immunizations in Chapter 23, Subchapter C.

C. *Cost and Paperwork Estimate*

1. *Cost*

a. *Commonwealth*

The Commonwealth will incur some costs for the purchase of TdaP and MCVs, as well as additional Td, hepatitis B and varicella vaccines, and the mumps containing vaccine (MMR), through the expenditure of Federal immunization grant funds. The Commonwealth will also incur costs through the Medical Assistance Program, which pays for administering the vaccines for eligible persons. The Department makes vaccines available at no cost to private providers enrolled in the Vaccines for Children (VFC) Program for children through 18 years of age who have no insurance, who are Medicaid eligible or who are Alaskan Native or American Indian. In addition, VFC Program vaccines are also made available to other public clinic sites (Federally qualified health centers and rural health clinics) for the same population and also for underinsured children through 18 years of age. Vaccines are made available to schools at no cost through the Department's School Based Catch-Up Program for students who do not have a medical home or are unable to seek the immunization through a public clinic site. The Commonwealth will realize savings, however, based on the amount of funds that will not be needed to control the outbreak of vaccine preventable diseases.

The inclusion of a grace period into the final-form rulemaking adds no cost for the Commonwealth, including either the Department or the Department of Education. The 4-day grace period is intended to allow a vaccine dose administered 4 days before the minimum interval between doses or before the appropriate age is reached to be counted as a valid dose. Since there is no scientific basis for taking a position that a vaccine must be given with a strict interval between doses or at an exact age or the vaccine is ineffective or unsafe, the grace period would merely allow schools to accept vaccines provided within this period for purposes of determining compliance with the Department's regulations regarding school attendance.

b. *Local Government*

There will be no fiscal impact on local governments. Local governments may see a slight cost savings, since they do bear some of the cost of disease outbreak investigations and control measures. The Department addresses the potential impact of final-form rulemaking on school districts, which may be considered to be local government, under the heading of "regulated community."

c. *Regulated Community*

Families whose children's vaccinations are covered by their insurance plans (public or private) under State law will not see out-of-pocket costs for the added vaccines. Families whose insurance plans do not cover these vaccinations, or who do not have insurance, will need to seek other assistance to pay for the vaccines or pay out-of-pocket. In general, there is other assistance provided for vaccinations from the Department, if a third party payer is not available. The Department, through its State health centers, provides vaccinations. The Department also provides vaccines to providers for certain eligible children through the VFC Program and to schools through its School Based Catch-Up Program. The savings in prevention of childhood illness outweigh the minimal cost of the vaccine.

The inclusion of a grace period does not add costs for school districts. School districts currently decide which children are appropriately immunized and which are not appropriately immunized and so are to be excluded from attendance. The inclusion of a 4-day grace period, which is intended to allow a vaccine dose administered 4 days before the minimum interval between doses or before the appropriate age is reached to be counted as a valid dose, will now be taken into consideration in making this determination. This final-form rulemaking does not add significantly to the cost of determining whether children are appropriately immunized, since the recommendation

for a waiver period has been in place since the Department published a final-form rulemaking in 2002.

The final-form rulemaking adds two additional immunizations for school officials to review, two additional vaccine doses to account for (two doses of varicella and two doses of mumps) and may increase the amount of follow-up needed to ensure that provisionally enrolled students in all grades receive the necessary doses in the series for all required immunizations prior to the expiration of the 8-month provisional enrollment deadline. Provisional enrollment allows for a child who has not had all the required vaccine doses described in § 23.83 to continue attendance at school if he has had at least one dose of each required vaccine and there is a plan for that child obtaining all required immunizations or, in the case of a multiple dose vaccine, that, although the child lacks any dose, there is a plan in place to receive the required dose. (See § 23.85(e).) A child provisionally admitted to school shall have completed the immunizations required under § 23.83 within an 8-month period from the date of his provisional admission or the school administrator may neither admit the child to school nor permit the child's continued admission. (See § 23.85(e).) Again, the savings in the prevention of an outbreak of a childhood illness in a school district outweighs the minimal cost in staff time to review two additional immunizations and to follow-up on provisional enrollments.

No additional cost will be added to the regulated community by the deletion of the requirements that the hemagglutination test or a comparable test be used to show a history of immunity to measles or German measles and that a more current test be used. Even without an amendment to the regulations, there would be a cost associated with choosing this particular method of showing immunity—the cost of the hemagglutination test. Since the final-form rulemaking does not prohibit that particular test from being used in the future, no cost beyond that of the hemagglutination test would be incurred and the cost of the final-form rulemaking in this regard remains stable. Future tests may, in fact, decrease in price, which would provide a cost savings for affected persons. Further, use of this method of proving immunity is not required.

Lastly, no additional cost is added by the Department's clarification regarding children in child care group settings located in schools. The requirements for attendance at school and school reporting do not apply to those children. The regulations that apply are those immunization requirements that are already in place that deal with child care group settings in § 27.77.

d. *General Public*

The general public will not see an increase in cost. The general public will see a decrease in costs resulting from a reduction in medical treatment needed to treat the disease and a reduction in the loss of work to stay home with a sick child. The general public may see a benefit in the reduction of vaccine preventable diseases, such as pertussis, chickenpox, mumps and meningitis. Since the school environment is conducive to the contracting and transmission of diseases among children with no immunity, failure to immunize properly not only puts children at risk for contracting these debilitating diseases, it also places the public at risk since these diseases are then easily spread by staff and children outside the school setting and into the general public.

2. *Paperwork Estimates*

a. *The Commonwealth and the Regulated Community*

Schools will be required to report in accordance with the new reporting requirements, which require them to report the number of doses of individual antigens that have been administered to students. The Department will need to review and include those new reported numbers in its report to the CDC. Schools are currently required to report immunization coverage status for their students to the Department for the Department to satisfy CDC requirements regarding reporting of immunizations. The additional paperwork requirements for the Commonwealth, including both the Department and the Department of Education, and the regulated community would be minimal, however, since school districts already complete this annual report regarding the number of immunizations and follow up on provisional enrollment. School nurses, who perform recordkeeping and reporting requirements in the schools, currently maintain and report this information. The CDC, however, is in the process of changing these requirements. The Department will provide reporting forms to schools, as it currently does, and the reports will be sent to the same Department office as the current reports. Schools also have the option of electronic reporting.

b. *Local Government*

There is no additional paperwork requirement for local government. The Department included school districts, which may be considered to be local government, under the heading of "regulated community."

c. *General Public*

There is no additional paperwork requirement for the general public.

D. *Statutory Authority*

The Department obtains its authority to promulgate regulations regarding immunizations in schools from several sources. Generally, the Disease Prevention and Control Law of 1955 (act) (35 P. S. §§ 521.1—521.21) provides the Board with the authority to issue rules and regulations on a variety of matters regarding communicable and noncommunicable diseases, including what control measures are to be taken with respect to which diseases, provisions for the enforcement of control measures, requirements concerning immunization and vaccination of persons and animals, and requirements for the prevention and control of disease in public and private schools. (See section 16(a) of the act.) Section 16(b) of the act gives the Secretary of the Department the authority to review existing regulations and make recommendations to the Board for changes the Secretary considers to be desirable.

The Department also finds general authority for the promulgation of its regulations in The Administrative Code of 1929 (71 P. S. §§ 51—732). Section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)) gives the Department this general authority. Section 2111(b) of The Administrative Code of 1929 (71 P. S. § 541(b)) provides the Board with additional authority to promulgate regulations deemed by the Board to be necessary for the prevention of disease and for the protection of the lives and the health of the people of this Commonwealth. Section 2111 of The Administrative Code of 1929 further provides that the regulations of the Board shall become the regulations of the Department.

The Department's specific authority for promulgating regulations regarding school immunizations is found in

The Administrative Code of 1929 and in the Public School Code of 1949. Section 2111(c.1) of The Administrative Code of 1929 provides the Board with the authority to make and revise a list of communicable diseases against which children are required to be immunized as a condition of attendance at public, private or parochial schools, including kindergarten. The section requires the Secretary to promulgate the list along with rules and regulations necessary to insure the immunizations are timely, effective and properly verified.

Section 1303 of the Public School Code of 1949 provides that the Board will make and review a list of diseases against which children shall be immunized, as the Secretary may direct, before being admitted to school for the first time. The section provides that the school directors, superintendents, principals or other persons in charge of public, private, parochial or other schools including kindergarten, shall ascertain whether the immunization has occurred, and certificates of immunization will be issued in accordance with rules and regulations promulgated by the Secretary with the sanction and advice of the Board.

E. *Effectiveness/Sunset Dates*

The final-form rulemaking will become effective on August 1, 2011. This will allow parents, guardians and schools time to become familiar with the requirements, prepare for their implementation and obtain the required vaccinations prior to the effective dates. No sunset date has been established. The Department will continually review and monitor the effectiveness of these regulations.

F. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 21, 2006, the Department submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 750, to IRRC and to the House Health and Human Services Committee and the Senate Public Health and Welfare Committee (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 21, 2010, the final-form rulemaking was approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 22, 2010, and approved the final-form rulemaking.

G. *Contact Person*

Questions regarding this final-form rulemaking should be submitted to Heather Stafford, Director, Division of Immunization, Department of Health, 625 Forster Street, Harrisburg, PA 17108, (717) 787-5681 within 30 days after publication in the *Pennsylvania Bulletin*. Persons with a disability who wish to submit comments, suggestions or objections regarding the final-form rulemaking may do so by using the previous phone number or address. Speech or hearing impaired persons may use V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT). Persons who require an alternative format of this document should contact Heather Stafford so that necessary arrangements may be made.

Findings

The Department finds that:

(1) Public notice of intention to adopt the final-form rulemaking adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The adoption of final-form rulemaking in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(1) The regulations of the Department, 28 Pa. Code Chapters 23 and 27, are amended by amending §§ 23.82, 23.83, 23.85, 23.86 and 27.77 to read as set forth in Annex A. (*Editor's Note*: Section 23.85 was not proposed to be amended at 38 Pa.B. 750.)

(2) The Secretary of Health shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(3) The Secretary of Health shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.

(4) The Secretary of Health shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(5) This order shall take effect August 1, 2011.

EVERETTE JAMES,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 2493 (May 8, 2010).)

Fiscal Note: 10-181. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART III. PREVENTION OF DISEASES

CHAPTER 23. SCHOOL HEALTH

Subchapter C. IMMUNIZATION

§ 23.82. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Ascertain—To determine whether or not a child is immunized as defined in this subchapter.

Attendance at school—(i) The attendance at a grade, or special classes, kindergarten through 12th grade, including public, private, parochial, vocational, intermediate unit and home education students and students of cyber and charter schools. (ii) The term does not cover the attendance of children at a child care group setting, defined in § 27.1 (relating to definitions), located in a public, private, or vocational school, or in an intermediate unit.

Certificate of immunization—The official form furnished by the Department. The certificate is filled out by the

parent or health care provider and signed by the health care provider, public health official or school nurse or a designee. The certificate is given to the school as proof of immunization. The school maintains the certificate as the official school immunization record or stores the details of the record in a computer data base.

Department—The Department of Health of the Commonwealth.

Immunization—The requisite number of dosages of the specific antigens at the recommended time intervals under this subchapter.

Record of immunization—A written document showing the date of immunization—that is, baby book, Health Passport, family Bible, other states' official immunization documents, International Health Certificate, immigration records, physician record, school health records and other similar documents or history.

Secretary—The Secretary of the Department.

§ 23.83. Immunization requirements.

(a) *Duties of a school director, superintendent, principal or other person in charge of a public, private, parochial or nonpublic school*. Each school director, superintendent, principal, or other person in charge of a public, private, parochial or nonpublic school in this Commonwealth, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, shall ascertain that a child has been immunized in accordance with the requirements in subsections (b), (c) and (e) prior to admission to school for the first time, under section 1303 of the Public School Code of 1949 (24 P. S. § 13-1303a) regarding immunization required; penalty.

(b) *Required for attendance*. The following immunizations are required as a condition of attendance at school in this Commonwealth:

(1) *Diphtheria*. Four or more properly-spaced doses of diphtheria toxoid, which may be administered as a single antigen vaccine or in a combination form. The fourth dose shall be administered on or after the 4th birthday.

(2) *Tetanus*. Four or more properly-spaced doses of tetanus toxoid, which may be administered as a single antigen vaccine or in a combination form. The fourth dose shall be administered on or after the 4th birthday.

(3) *Poliomyelitis*. Three or more properly spaced doses of either oral polio vaccine or enhanced activated polio vaccine, which may be administered as a single antigen vaccine, or in a combination form. If a child received any doses of inactivated polio vaccine administered prior to 1988, a fourth dose of inactivated polio vaccine is required.

(4) *Measles (rubeola)*. Two properly-spaced doses of live attenuated measles vaccine, the first dose administered at 12 months of age or older, or a history of measles immunity proved by laboratory testing by a laboratory with the appropriate certification. Each dose of measles vaccine may be administered as a single antigen vaccine or in a combination form.

(5) *German measles (rubella)*. One dose of live attenuated rubella vaccine, administered at 12 months of age or older or a history of rubella immunity proved by laboratory testing by a laboratory with the appropriate certification. Rubella vaccine may be administered as a single antigen vaccine or in a combination form.

(6) *Mumps*. Two properly-spaced doses of live attenuated mumps vaccine, administered at 12 months of age or older or a physician diagnosis of mumps disease indicated by a written record signed by the physician or the physician's designee. Mumps vaccine may be administered as a single antigen vaccine or in a combination form.

(7) *Hepatitis B*. Three properly-spaced doses of hepatitis B vaccine, unless a child receives a vaccine as approved by the Food and Drug Administration for a two-dose regimen, or a history of hepatitis B immunity proved by laboratory testing. Hepatitis B vaccine may be administered as single antigen vaccine or in a combination form.

(8) *Chickenpox (varicella)*. One of the following:

(i) *Varicella vaccine*. Two properly-spaced doses of varicella vaccine, the first dose administered at 12 months of age or older. Varicella vaccine may be administered as a single antigen vaccine or in a combination form.

(ii) *Evidence of immunity*. Evidence of immunity may be shown by one of the following:

(A) Laboratory evidence of immunity or laboratory confirmation of disease.

(B) A written statement of a history of chickenpox disease from a parent, guardian or physician.

(c) *Required for entry into 7th grade*. In addition to the immunizations listed in subsection (b), the following immunizations are required at any public, private, parochial or nonpublic school in this Commonwealth, including vocational schools, intermediate unit, special education and home education programs, and cyber and charter schools as a condition of entry for students entering the 7th grade; or, in an ungraded class, for students in the school year that the student is 12 years of age:

(1) *Tetanus and diphtheria toxoid and acellular pertussis vaccine (TdaP)*. One dose if at least 5 years have elapsed since the last dose of a vaccine containing tetanus and diphtheria as required in subsection (b). TdaP may be administered as a single antigen vaccine or in a combination form.

(2) *Meningococcal Conjugate Vaccine (MCV)*. One dose of Meningococcal Conjugate Vaccine. MCV may be administered as a single antigen vaccine or in a combination form.

(d) *Child care group setting*. Attendance at a child care group setting located in a public, private or vocational school, or in an intermediate unit is conditional upon the child's satisfaction of the immunization requirements in § 27.77 (relating to immunization requirements for children in child care group settings).

(e) *Prekindergarten programs, Early Intervention programs' early childhood special education classrooms and private academic preschools*. Attendance at a prekindergarten program operated by a school district, an early intervention program operated by a contractor or subcontractor including intermediate units, school districts and private vendors, or at private academic preschools is conditional upon the child's satisfaction of the immunization requirements in § 27.77.

(f) *Grace period*. A vaccine dose administered within the 4-day period prior to the minimum age for the vaccination or prior to the end of the minimum interval between doses shall be considered to be a valid dose of the vaccine for purposes of this chapter. A dose adminis-

tered greater than 4 days prior to minimum age or interval for a dose is invalid for purposes of this regulation and shall be repeated.

§ 23.85. Responsibilities of schools and school administrators.

(a) The administrator in charge of a school shall appoint a knowledgeable person to perform the following:

(1) Inform the parent, guardian or emancipated child at registration or prior to registration, if possible, of the requirements of this subchapter.

(2) Ascertain the immunization status of a child prior to admission to school or continued attendance at school.

(i) The parent, guardian or emancipated child shall be asked for a completed certificate of immunization.

(ii) In the absence of a certificate of immunization, the parent, guardian or emancipated child shall be asked for a record or history of immunization which indicates the month, day and year that immunizations were given. This information shall be recorded on the certificate of immunization and signed by the school official or the official's designee, or the details of the record shall be stored in a computer database.

(b) If the knowledgeable person designated by the school administrator is unable to ascertain whether a child has received the immunizations required under § 23.83 (relating to immunization requirements) or under subsection (e) or is exempt under § 23.84 (relating to exemption for immunization), the school administrator may admit the child to school or allow the child's continued attendance at school only according to the requirements of subsections (d) and (e).

(c) The parent or guardian of a child or the emancipated child who has not received the immunizations required under § 23.83 shall be informed of the specific immunizations required and advised to go to the child's usual source of care or nearest public clinic to obtain the required immunizations.

(d) A child not previously admitted to or not allowed to continue attendance at school because the child has not had the required immunizations shall be admitted to or permitted to continue attendance at school only upon presentation to the school administrator or school administrator's designee of a completed certificate of immunization or immunization record, upon submission of information sufficient for an exemption under § 23.84, or upon compliance with subsection (e).

(e) *Provisional admittance to school*.

(1) *Multiple dose vaccine series*. If a child has not received all the antigens for a multiple dose vaccine series described in § 23.83, the child may be provisionally admitted to school only if evidence of the administration of at least one dose of each antigen described in § 23.83 for multiple dose vaccine series is given to the school administrator or the administrator's designee and the parent or guardian's plan for completion of the required immunizations is made part of the child's health record.

(2) *Single dose vaccines*. If a child has not received a vaccine for which only a single dose is required, the child may be provisionally admitted to school if the parent or guardian's plan for obtaining the required immunization is made a part of the child's health record.

(3) *Completion of required immunizations*. The plan for completion of the required immunizations shall be reviewed every 60 days by the school administrator or the school administrator's designee. Subsequent immunizations shall be entered on the certificate of immunization or entered in the school's computer database. Immunization requirements described in § 23.83 shall be completed within 8 months of the date of provisional admission to school. If the requirements are not met, the school administrator may not admit the child to school or permit continued attendance after that 8 month provisional period.

(f) A school shall maintain on file a certificate of immunization for a child enrolled. An alternative to maintaining a certificate on file is to transfer the immunization information from the certificate to a computer database. The certificate of immunization or a facsimile thereof generated by computer shall be returned to the parent, guardian or emancipated child or the school shall transfer the certificate of immunization (or facsimile) with the child's record to the new school when a child withdraws, transfers, is promoted, graduates or otherwise leaves the school.

§ 23.86. School reporting.

(a) A public, private, parochial or nonpublic school in this Commonwealth, including vocational schools, intermediate units, special education and home education programs and cyber and charter schools, shall report immunization data to the Department by October 15 of each year, using forms provided by the Department.

(b) The school administrator or the administrator's designee shall forward the reports to the Department as indicated on the reporting form provided by the Department.

(c) Duplicate reports shall be submitted to the county health department if the school is located in a county with a full-time health department.

(d) The school administrator or the administrator's designee shall ensure that the school's identification information, including the name of the school, school district, county and school address, is correct, and shall make any necessary corrections, prior to submitting the report.

(e) Content of the reports must include the following information:

(1) The month, day and year of the report.

(2) The number of students attending school in each grade-level, or in an ungraded school in each age group, as indicated on the reporting form.

(3) The number of doses of each individual antigen given in each grade-level, or in an ungraded school, in each age group, as indicated on the reporting form.

(4) The number of students attending school who were classed as medical exemptions in each grade-level, or in an ungraded school, in each age group, as indicated on the reporting form.

(5) The number of students attending school who were classed as religious exemptions in each grade level, or in an ungraded school, in each age group, as indicated on the reporting form.

(6) The number of students provisionally admitted in each grade level or, in an ungraded school, in any age group as indicated on the reporting form.

(7) The number of students in each grade level who were denied admission because of the student's inability to qualify for provisional admission or, in an ungraded school, in each age group as indicated on the reporting form.

(8) Other information as required by the Department.

CHAPTER 27. COMMUNICABLE AND NONCOMMUNICABLE DISEASES

Subchapter C. QUARANTINE AND ISOLATION

COMMUNICABLE DISEASES IN CHILDREN AND STAFF ATTENDING SCHOOLS AND CHILD CARE GROUP SETTINGS

§ 27.77. Immunization requirements for children in child care group settings.

(a) *Caregiver responsibilities.*

(1) Except as exempted in subsection (d), effective March 27, 2002, the caregiver at a child care group setting may not accept or retain a child 2 months of age or older at the setting, for more than 60 days, unless the caregiver has received a written objection to a child being vaccinated on religious grounds from a parent or guardian, or one of the following:

(i) For all children not exempt under subsection (d)(1)(ii), an initial written verification from a physician, the Department or a local health department of the dates (month, day and year) the child was administered any vaccines recommended by ACIP. The verification must also specify any vaccination not given due to medical condition of the child and state whether the condition is temporary or permanent. The verification must show compliance with the vaccination requirements in subsection (b).

(ii) For all children for whom vaccinations remain outstanding following the caregiver's receipt of the initial written verification, subsequent written verifications from a physician, the Department or a local health department as additional vaccinations become due. These verifications shall be prepared in the same manner as set forth in subparagraph (i), but need not repeat information contained in a previously submitted verification. The verifications must demonstrate continuing compliance with the vaccination requirements in subsection (b).

(2) If the caregiver receives a written verification under paragraph (1) explaining that timely vaccination did not occur due to a temporary medical condition, the caregiver shall exclude the child from the child care group setting after an additional 30 days unless the caregiver receives, within that 30-day period, written verification from a physician, the Department or a local health department that the child was vaccinated or that the temporary medical condition still exists. If the caregiver receives a written verification that vaccination has not occurred because the temporary condition persists, the caregiver shall require the presentation of a new verification at 30-day intervals. If a verification is not received as required, the caregiver shall exclude the child from the child care group setting and not readmit the child until the caregiver receives a verification that meets the requirements of this section.

(3) The caregiver shall retain the written verification or objection referenced in paragraphs (1) and (2) for 60 days following the termination of the child's attendance.

(4) The caregiver shall ensure that a certificate of immunization is completed and signed for each child enrolled in the child care group setting. The certificates shall be updated by the caregiver to include the information provided to the caregiver under subsection (a) when that additional information is received. The immunization status of each enrolled child shall be summarized and reported on an annual basis to the Department at the time prescribed by the Department and on the form provided by the Department.

(b) *Vaccination requirements*. Each child enrolled in a child care group setting shall be immunized in accordance with ACIP standards in effect on January 1, 1999, governing the issuance of ACIP recommendations for the immunization of children.

(1) The standards are as follows:

(i) The immunization practice is supported by both published and unpublished scientific literature as a means to address the morbidity and mortality of the disease.

(ii) The labeling and packaging inserts for the immunizing agent are considered.

(iii) The immunizing agent is safe and effective.

(iv) The schedule for use of the immunizing agent is administratively feasible.

(2) The Department will deem an ACIP recommendation pertaining to the immunization of children to satisfy the standards in this subsection unless ACIP alters its standards for recommending immunizations for children by eliminating a standard set forth in this subsection and the recommendation is issued under those changed standards.

(c) *Notice*. The Department will place a notice in the *Pennsylvania Bulletin* listing publications containing ACIP recommendations issued under the standards in subsection (b). The Department published the initial notice at 32 Pa.B. 539 (January 26, 2002), contemporaneously with the adoption of amendments to this chapter. The Department will update that list in a notice which it will publish in the *Pennsylvania Bulletin* within 30 days after ACIP issues a recommendation which satisfies the criteria of this section.

(d) *Exemptions*.

(1) This section does not apply to the following:

(i) Children attending kindergarten, elementary school or higher school who are 5 years of age or older. These caregivers shall comply with §§ 23.81—23.87 (relating to immunization).

(ii) A caregiver who does not serve as a caregiver for at least 40 hours during at least 1 month.

(2) The requirement imposed by subsection (a), to not accept a child into a child care group setting without receiving an initial written verification or objection specified in subsection (a), does not apply during a month the caregiver does not serve as a caregiver for at least 40 hours.

(e) *Exclusion when disease is present*. Whenever one of the diseases in § 27.76 (relating to exclusion and readmission of children, and staff having contact with children, in child care group settings) has been identified within a child care group setting, the Department or a local health department may order the exclusion from the child care group setting or any other child care group setting which is determined to be at high-risk of transmission of that disease, of an individual susceptible to that disease in accordance with public health standards as determined by the Department.

[Pa.B. Doc. No. 10-984. Filed for public inspection May 28, 2010, 9:00 a.m.]

Title 37—LAW

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CH. 93]

Inmate Correspondence

The Department of Corrections (Department) amends § 93.2 (relating to inmate correspondence) to read as set forth in Annex A under the authority in The Administrative Code of 1929 (71 P. S. § 51-732).

Omission of Proposed Rulemaking

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL), and 1 Pa. Code § 7.4(3) (relating to omission of notice of proposed rulemaking) because the Department has found for good cause that under the circumstances the publication of proposed rulemaking is impracticable, unnecessary and contrary to the public interest. The final-omitted rulemaking amends § 93.2 to clarify that inmates are not permitted to receive correspondence containing nudity, explicit sexual material or obscene material. Section 93.2 provides an exception for artistic, literary, educational and scientific materials. The final-omitted rulemaking is necessary to clarify § 93.2 which addresses obscene material, but is silent with respect to nudity and explicit sexual material. The Department issued an internal policy, notice of which was provided to inmates, prohibiting correspondence containing nudity and explicit sexual material. However, the Commonwealth Court declared the Department's internal policy to be "of no effect" because it was not promulgated through the process in the CDL.

The Department, for good cause, finds that notice of proposed rulemaking is impracticable, unnecessary and contrary to the public interest. The effect of the Commonwealth Court's decision will be to permit inmates to obtain nudity and explicit sexual material until § 93.2 can be amended. The Department amended § 93.2 because it believes that allowing inmates to possess nudity and explicit sexual material is contrary to its effort to rehabilitate inmates, particularly sex offenders. Additionally, the possession of explicit sexual material by minors is a crime. The Department's inmate population includes many minors. Providing notice of proposed rulemaking also will allow nudity and explicit sexual material into State correctional institutions for a time and then require that the material be removed. This will create an extremely hazardous situation.

Inmates and staff in prisons in this Commonwealth are experiencing a higher amount of tension than is normal largely because the Commonwealth currently is incarcerating over 52,000 inmates; the largest population in the Department's history. Inmates also are tense concerning the planned temporary relocation of 2,000 inmates to Virginia and Michigan. Additionally, the economic downturn has strained the Department's budget and new personnel are not being hired at the same rate as those who leave employment, creating additional work for the remaining personnel. The increase in inmate and staff tensions, coupled with the population level, increases the risk of a prison riot. Allowing inmates to possess nudity and explicit sexual material on a temporary basis while a proposed rulemaking is published will mean that Department employees will have to sweep the prisons and confiscate newly introduced nudity and explicit sexual material when § 93.2 is amended. This will further strain employee resources and morale. Further, inmate frustration will increase when what has been returned temporarily is removed giving rise to more inmate grievances and potentially resulting in aggressive actions toward an already burdened staff. Finally, permitting inmates to possess nudity, explicit sexual material and obscene material temporarily will result in some inmates expending funds for subscriptions which they will be unable to receive once § 93.2 is amended.

The introduction of nudity and explicit sexual material into State correctional institutions will also undercut the sex offender programs, which do not allow sex offenders to view these materials because once the materials are introduced into the system there is no effective way of preventing inmates from passing them on to other inmates, including minors. The introduction of nudity and explicit sexual material will also cause confusion for overburdened mailroom staff that has been trained not to permit inmates to possess these materials. Additionally, in *Brittain v. Beard*, 974 A.2d 479 (2009), the Pennsylvania Supreme Court determined that an inmate did not prove that the Department's prohibition of nudity and explicit sexual material violated the First Amendment. Finally, inmates will be given notice of the amendment to § 93.2 through postings placed in the libraries and housing units of State correctional institutions.

Purpose

The purpose of this final-omitted rulemaking is to amend the Department's inmate correspondence regulation to prohibit inmates from receiving nudity and explicit sexual material. The final-omitted rulemaking is necessary to preserve the Department's current prohibition which was found to be "of no effect" by the Commonwealth Court because it was not promulgated according to the process set forth in the CDL. The prohibition is intended to further the Department's efforts to rehabilitate inmates and reduce and prevent crime.

Affected Individuals

The final-omitted rulemaking affects Department staff, inmates and persons who publish or send inmates material containing nudity, explicit sexual material or obscene material. The final-omitted rulemaking affects Department staff and inmates by preserving the Department's existing policy which prohibits inmates from receiving or possessing nudity, explicit sexual material and obscene material. The final-omitted rulemaking affects persons who publish and send inmates material containing nudity, explicit sexual material or obscene material by preventing inmates from having these publications mailed to State correctional institutions. The final-omitted rulemaking affects persons who send to inmates correspondence containing nudity (such as nude photographs), explicit sexual material or obscene material in that the material will be confiscated in the mailrooms of the various State correctional institutions and not furnished to the inmate.

Fiscal Impact and Paperwork Estimates

The final-omitted rulemaking will be revenue neutral as it simply preserves existing Department practice. The final-omitted rulemaking is not expected to result in an increased amount of paperwork.

Public Comment and Contact Person

Although the rulemaking is being adopted without publication as a proposed rulemaking, interested persons are invited to submit written comments, suggestions or objections to the Department of Corrections, Randall N. Sears, Deputy Chief Counsel, 55 Utley Drive, Camp Hill, PA 17011.

Persons with a disability who require an auxiliary aid or service may submit comments by using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Effective Date

The final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date has been assigned.

Regulatory Review Act

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on April 7, 2010, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Judiciary Committee and the Senate Judiciary Committee (Committees). On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.1) and (j.2) of the Regulatory Review Act, on May 12, 2010, the final-omitted rulemaking was approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 13, 2010, and approved the final-omitted rulemaking.

Findings

The Department finds that:

(a) Notice of proposed rulemaking is omitted in accordance with section 204(3) of the CDL and 1 Pa. Code § 7.4(3) because the Department has made a good cause finding that, under the circumstances, a proposed rulemaking is impracticable, unnecessary and contrary to the public interest. The final-omitted rulemaking amends § 93.2 to clarify that inmates are not permitted to receive correspondence containing nudity, explicit sexual material or obscene material. Section 93.2 provides an exception for artistic, literary, educational and scientific materials. The final-omitted rulemaking is necessary to clarify § 93.2 which addresses obscene material, but is silent with respect to nudity and explicit sexual material. The Department issued an internal policy, notice of which was provided to inmates, prohibiting correspondence containing nudity and explicit sexual material. However, the Commonwealth Court declared the Department's internal policy to be "of no effect" because it was not promulgated through the process in the CDL.

The Department, for good cause, finds that notice of proposed rulemaking is impracticable, unnecessary and contrary to the public interest. The effect of the Commonwealth Court's decision will be to permit inmates to obtain nudity and explicit sexual material until § 93.2 can be amended. The Department has amended § 93.2 because it believes that allowing inmates to possess nudity and explicit sexual material is contrary to its effort to rehabilitate inmates, particularly sex offenders. Additionally, the possession of explicit sexual material by minors is a crime. The Department's inmate population includes many minors. Providing notice of proposed rulemaking also will allow nudity and explicit sexual material into State correctional institutions for a time and then require that the material be removed. This will create an extremely hazardous situation.

Inmates and staff in prisons in this Commonwealth are experiencing a higher amount of tension than is normal largely because the Commonwealth currently is incarcerating over 52,000 inmates; the largest population in the Department's history. Inmates also are tense concerning the planned temporary relocation of 2,000 inmates to Virginia and Michigan. Additionally, the economic downturn has strained the Department's budget and new personnel are not being hired at the same rate as those who leave employment, creating additional work for the remaining personnel. The increase in inmate and staff tensions, coupled with the population level, increases the risk of a prison riot. Allowing inmates to possess nudity and explicit sexual material on a temporary basis while a proposed rulemaking is published will mean that Department employees will have to sweep the prisons and confiscate newly introduced nudity and explicit sexual material when § 93.2 is amended. This will further strain employee resources and morale. Further, inmate frustration will increase when what has been returned temporarily is removed giving rise to more inmate grievances and potentially resulting in aggressive actions toward an already burdened staff. Finally, permitting inmates to possess nudity, explicit sexual material and obscene material temporarily will result in some inmates expending funds for subscriptions which they will be unable to receive once § 93.2 is amended.

The introduction of nudity and explicit sexual material into State correctional institutions will also undercut the sex offender programs, which do not allow sex offenders to view these materials because once the materials are introduced into the system there is no effective way of preventing inmates from passing them on to other inmates, including minors. The introduction of nudity and explicit sexual material will also cause confusion for overburdened mailroom staff that has been trained not to permit inmates to possess these materials. Additionally, in *Brittain v. Beard*, 974 A.2d 479 (2009), the Pennsylvania Supreme Court determined that an inmate did not prove that the Department's prohibition of nudity and explicit sexual material was unconstitutional under the First Amendment. Finally, inmates will be given notice of the amendment to § 93.2 through postings placed in the libraries and housing units of State correctional institutions.

(b) The adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration of State correctional institutions under the jurisdiction of the Department.

Order

The Department, acting under The Administrative Code of 1929, orders that:

(a) The regulations of the Department, 37 Pa. Code Chapter 93, are amended by amending § 93.2 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JEFFREY A. BEARD, Ph.D.,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 2838 (May 29, 2010).)

Fiscal Note: 19-12. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 93. STATE CORRECTIONAL INSTITUTIONS AND FACILITIES

Subchapter A. RIGHTS AND PRIVILEGES

§ 93.2. Inmate correspondence.

(a) *Permitted correspondence*. Inmates are permitted to correspond with friends, family members, attorneys, news media, legitimate business contacts and public officials. There may be no limit to the number of correspondents.

(b) *Restrictions*. The following restrictions apply:

(1) Correspondence with inmates of other facilities, former inmates, probationers or victims of the criminal acts of the inmate will not be permitted except upon approval of the facility manager or a designee.

(2) Correspondence containing threatening, obscene or explicit sexual material, or nudity as well as correspondence containing criminal solicitation or furthering a criminal plan or institution misconduct is prohibited.

(3) An inmate shall refrain from writing to persons who have stated in writing that they do not wish to receive mail from the inmate. This will not be interpreted to restrict the right of inmates to correspond with public officials with respect to the official duties of the latter.

(4) Correspondence with prohibited parties through a third party is also prohibited.

(5) Mail addressed to an inmate organization will not be accepted unless the facility manager and Secretary have approved the organization and it is addressed to the staff coordinator of the organization.

(c) *Incoming mail*. Mail sent to a facility will be opened and examined for contraband in the facility's mailroom or designated area except when permitted under paragraph (1).

(1) The Department may permit sealed mail to be opened in the presence of an inmate under the following conditions:

(i) An attorney or authorized representative/designee may hand-deliver a sealed confidential client communication to an inmate if the attorney is unable to communicate through alternative means, if the following conditions are met:

(A) The person making the delivery does so during normal business hours unless granted permission in advance by the Secretary or a designee.

(B) The person making the delivery shall provide valid identification and information sufficient to verify that the person is the inmate's attorney or authorized representative of the attorney.

(C) The person making delivery shall present the documents for inspection for contraband, unsealed and unbound.

(D) Upon inspection, the documents will be sealed and delivered to the inmate where they will be unsealed and searched again for contraband.

(ii) An attorney may obtain a control number from the Department's Office of Chief Counsel if the attorney wishes to have correspondence addressed to an inmate client opened in the presence of the inmate.

(A) An attorney shall submit a written request for a control number to the Office of Chief Counsel. The request must include the attorney's name, address, telephone and facsimile numbers, State attorney identification number and a verification subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that all mail sent to inmates using the control number will contain only essential, confidential, attorney-client communication and will contain no contraband.

(B) The attorney shall place the control number on each envelope that the attorney wishes to have opened in an inmate's presence. The number is confidential. It shall only be placed on the outside of the envelope so that it can be obliterated before it is delivered to an inmate client.

(C) If a control number does not appear on the envelope, the mail will be treated as regular mail and opened in the mailroom unless the procedures in subparagraph (i) are followed.

(D) The Department may change the control number for any reason upon notice to the attorney who requested it.

(iii) A court may direct delivery of court documents sealed from public disclosure to an inmate by specific order. The court's representative shall deliver the sealed documents and the specific court order to the facility. Under no circumstances will documents filed in a court of public record be delivered sealed to an inmate.

(2) Contraband in the form of money orders, certified checks, cash or other negotiable instruments will be recorded indicating the nature of the receipt, the sender, the amount received and the date. Personal checks, unless certified, will be returned to the sender. The facility is not responsible for cash sent through the mails. Confiscated coins and currency will be deposited in the Inmate General Welfare Fund. Contraband not specifically addressed in this section will be returned to the sender or destroyed.

(d) *Outgoing mail*. Sealed outgoing mail from an inmate will not be examined except as set forth in subsection (e).

(e) *Scrutiny of correspondence*.

(1) The facility manager or a designee may read incoming or outgoing mail, except mail sealed in accordance with subsection (c)(1), when there is reason to believe that it may reveal or discuss illegal or unauthorized activity or for reasons set forth in any Department document that is disseminated to inmates.

(2) The facility manager or a designee may read mail sealed in accordance with subsection (c)(1), only upon the written order of the facility manager with the written approval of the Secretary when there is reason to believe that there is a threat to facility security or criminal activity.

(f) *Rejection of correspondence*. An item of correspondence which appears to violate subsection (b) may be rejected by facility mailroom staff. The inmate and the sender, in cases when the inmate is not the sender, will be notified when the letter is rejected. The letter will be held for at least 7 business days after mailing of the notification to permit reasonable opportunity to protest the decision. If the letter is rejected, it will be returned to the sender.

(g) *Incoming publications.*

(1) A publication review committee consisting of staff designated by and reporting to the facility manager or a designee shall determine whether an inmate may receive a publication.

(2) Publications shall be received directly from a publisher, bookstore, book club, distributor or department store. Newspapers shall be mailed directly from the publisher.

(3) Publications may not be received by an inmate if they:

(i) Contain information regarding the manufacture of explosives, incendiaries, weapons, escape devices, poisons, drugs or intoxicating beverages or other contraband.

(ii) Advocate, assist or are evidence of criminal activity, inmate misconduct, violence, insurrection or guerrilla warfare against the government.

(iii) Threaten the security of a facility.

(iv) Contain nudity, obscene material or explicit sexual materials as defined in subsection (i).

(v) Constitute a bulk mailing specifically intended for the purpose of advertising or selling merchandise.

(4) An inmate under 18 years of age may not receive explicit sexual materials as defined in 18 Pa.C.S. § 5903 (relating to obscene and other sexual materials and performances).

(5) A publication will not be prohibited solely on the basis that the publication is critical of penal institutions in general, of a particular facility, staff member, or official of the Department, or of a correctional or penological practice in this or any other jurisdiction.

(6) An inmate may receive only one copy of any publication unless granted permission by the publication review committee.

(7) Small letter sized pamphlets may be received in regular correspondence.

(8) Covers of hardbound publications may be damaged or removed during inspection in the discretion of mailroom staff.

(h) *Exception*. Correspondence and publications containing nudity, explicit sexual material or obscene material as defined in subsection (i), may be permitted if the material has artistic, educational or medical value. The following considerations will guide the Department in determining whether to permit nudity, explicit sexual material or obscene material:

(1) Is the material in question contained in a publication that regularly features sexually explicit content intended to raise levels of sexual arousal or to provide sexual gratification, or both? If so, the publication will be denied for inmate possession.

(2) Is it likely that the content in question was published or provided with the primary intention to raise levels of sexual arousal or to provide sexual gratification, or both? If so, the publication or content will be denied for inmate possession.

(i) *Definitions*. The following words and terms, when used in this section, have the following meanings:

Explicit sexual material—Any book, photograph, pamphlet, magazine, printed matter, sound recording, explicit and detailed verbal description, narrative account or other material of the following:

(i) Sexual conduct, which means acts of masturbation, homosexuality, sexual intercourse, sexual bestiality or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if the person is a female, breast.

(ii) Sadomasochistic abuse, which means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(iii) Sexual excitement, which means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

Nudity—The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any portion below the top of the nipple, or the depiction of covered male genitals in a discernible turgid state.

Obscene—Any book, photograph, pamphlet, magazine, printed matter, sound recording, explicit and detailed verbal description, narrative account or other material is considered obscene if one of the following applies:

(i) An average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest.

(ii) The subject matter depicts or describes the following in a patently offensive way:

(A) Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy and sexual bestiality.

(B) Patently offensive representations or descriptions of masturbation or execratory functions.

(C) In a sexual context, flagellation or torture upon a nude person or one clad only in undergarments, a mask or bizarre costume or fettered, bound or otherwise physically restrained.

(D) Lewd exhibition of the genitals.

(j) *Construction*. This section is not intended and may not be interpreted to create or confer any rights in addition to those created by the United States Constitution, the Pennsylvania Constitution or Federal or State statutes applicable to the Department.

[Pa.B. Doc. No. 10-985. Filed for public inspection May 28, 2010, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 108 AND 187]

Family Violence and TANF and GA; Support from Relatives Not Living With the Client

The Department of Public Welfare (Department), under the authority of sections 402(a)(7) and 408(a)(7)(C) of the Social Security Act (act) (42 U.S.C.A. §§ 602(a)(7) and 608(a)(7)(C)), 45 CFR 264.1(c) (relating to what restrictions apply to the length of time Federal TANF assistance may be provided), sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)) and 23 Pa.C.S. §§ 4371—4381, 7312 and 8309, amends §§ 187.22 and 187.27 (relating to definitions; and waiver of cooperation for good cause) and adds Chapter 108

(relating to family violence and TANF and GA) to read as set forth in Annex A. Notice of proposed rulemaking was published at 38 Pa.B. 4514 (August 16, 2008).

Purpose of Final-Form Rulemaking

The purpose of this final-form rulemaking is to add Chapter 108. This final-form rulemaking codifies requirements regarding victims of domestic violence who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) or General Assistance (GA) cash assistance programs.

The final-form rulemaking also amends §§ 187.22 and 187.27 by deleting language regarding domestic violence that is incorporated into Chapter 108.

The Department will apply the policies in this final-form rulemaking to help identify victims of domestic violence, refer them to appropriate services, waive certain TANF or GA program requirements, when appropriate, and protect the confidentiality of domestic violence victims.

Affected Individuals and Organizations

This final-form rulemaking affects applicants and recipients who are victims of domestic violence. This final-form rulemaking also affects community agencies such as counseling agencies, shelters and other domestic violence service providers.

Accomplishments and Benefits

This final-form rulemaking will benefit TANF and GA applicants and recipients who are victims, have been victims or are at risk of further victimization due to domestic violence.

Individuals who disclose domestic violence will be referred to appropriate voluntary counseling and supportive services. Individuals who request and receive a waiver of TANF or GA program requirements may be temporarily excused from those requirements when compliance could jeopardize their safety, make it more difficult for them to escape domestic violence or place them at risk of further violence. Individuals who receive waivers of the 60-month time limit on receipt of TANF benefits will have more time to avail themselves of programs and supportive services that promote self-sufficiency. Approximately 3,909 individuals currently receiving cash assistance have good cause waivers for child support or work requirements.

According to the study "A Review of the Research on Welfare and Domestic Violence" by Richard Tolman and Jody Raphael in the *Journal of Social Issue* and Sharmila Lawrence's issue brief titled "Domestic Violence and Welfare Policy: Research Findings That Can Inform Policies on Marriage and Child Well-Being" from the Research Forum on Children, Families, and the New Federalism National Center for Children in Poverty, approximately 25% of current welfare recipients have a history of domestic violence. With the current cash assistance population, this final-form rulemaking could benefit approximately 30,000 individuals and families.

Fiscal Impact

There are no costs or savings associated with this final-form rulemaking.

Paperwork Requirements

A new written consent form allows the Department to release information to a third party as provided under § 108.14 (relating to safeguarding information). This form will be developed by the Department.

Public Comment

Written comments, suggestions and objections were solicited within a 30-day comment period. The Department received ten public comments. The commentators expressed enthusiastic support for the adoption of this final-form rulemaking. Commentators included the Community Justice Project, Women's Law Project, Community Legal Services of Philadelphia, the Pennsylvania Coalition against Domestic Violence, the Pennsylvania Welfare Coalition, Pathways Pa, Pennsylvania Hunger Action Center, Pennsylvania Coalition Against Rape, Public Citizens for Children and Youth, JEVS Human Services and Mid Penn Legal Services. The Department also received comments from the Independent Regulatory Review Commission (IRRC).

The Department carefully reviewed and considered each suggestion and comment and thanks the organizations that commented on this final-form rulemaking.

Discussion of Comments and Major Changes

Following is a summary of the comments received during the public comment period following publication of the proposed rulemaking and the Department's response to the comments. A summary of changes from the proposed rulemaking is also included.

Statutory Authority

IRRC noted that the Department cited the following as its authority for promulgating this proposed rulemaking: two sections of the Public Welfare Code (62 P. S. §§ 101—1417), two full titles of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) and the majority of three full chapters of 23 Pa.C.S. (relating to Domestic Relations Code). IRRC commented that the statutory authority included in the proposed rulemaking was too vague to adequately explain the Department's authority to promulgate this final-form rulemaking. IRRC proposed two solutions. The Department could more specifically identify the Department's statutory authority, as required under section 5.1(a)(1.1) of the Regulatory Review Act (71 P. S. § 745.5a(a)(1.1)) or it could include a brief narrative explaining how the provisions of law, as originally proposed, relate to each other to create the necessary statutory authority.

Response

The Department revised the statutory authority to more specifically identify the Department's authority.

§ 108.2 (relating to definitions)

IRRC commented that the definition of "FVO—Family violence option" should include a cross-reference to the Federal law mentioned in the definition.

Response

The Department agrees that the definition of "FVO—Family violence option" should include a cross-reference to Federal law and revised the definition accordingly.

IRRC also commented that although the Department defined the term "work requirements," the Department use of phrases "work or work-related activities" and "work program or other work activity" appear to mean the same thing. IRRC suggested that the term "work requirements" be used consistently throughout the final-form rulemaking.

Response

To clarify, the Department added the definition of "work and work-related activities" to § 108.2 and revised the definition of "work requirements" to "work and work-

related activity requirements." A "work or work-related requirement" refers to the requirements in Chapter 165 (relating to Road to Economic Self-Sufficient through Employment and Training (RESET) Program), such as hours an individual must meet; "work and work-related activities" refer to the actual activities in Chapter 165.

§ 108.3 (relating to universal notification)

Commentators and IRRC asserted that § 108.3(3)(iii) should include the phrase "education and training" and have a cross reference to the *Pennsylvania Code* for eligibility for supportive services.

Response

The Department agrees and incorporated the phrase "including education and training" in renumbered paragraph (6) and added a cross reference to Chapter 165 for eligibility for supportive services.

§ 108.5 (relating to individual notification)

Commentators recommended that the Department revise § 108.5(b)(3) by replacing the phrase "reducing benefits" with the phrase "imposing a sanction." They state that while the Department's current method of child support sanction is the reduction of benefits, this may not always be the case. Use of the term "imposing a sanction" will ensure the regulation will not become obsolete if the sanction changes in the future.

Response

The Department agrees with this comment and revised § 108.5(b)(3) accordingly.

Commentators suggested that the Department revise § 108.5(c) to clarify that the Department will provide written notification of the right to claim a good cause based on domestic violence to individuals who formerly disclosed domestic violence unless the recipient notifies the Department in writing that written notification may place the recipient at risk of further domestic violence.

Response

The Department agrees with this comment and revised § 108.5(c) accordingly.

Commentators recommended that the Department revise § 108.5(d)(2) by adding the phrase "and procedure for requesting" to ensure that individuals understand not only the availability of good cause waivers but also how to obtain a waiver.

Response

The Department agrees with this comment and revised § 108.5(d)(2) accordingly.

Commentators suggested that the Department revise § 108.5(e) to clarify that the Department will provide oral notification of the right to claim good cause based on domestic violence at application and renewal interviews.

Response

The Department agrees with this comment and revised § 108.5(e) accordingly.

§ 108.10 (relating to verification)

IRRC asked that the final-form rulemaking specify how an individual can obtain the verification form provided by the Department.

Response

The Department provides forms at applicable times—in person, by mail and at the client's request. The Department revised § 108.10 to include how the individual can obtain a verification form.

IRRC also asked the Department to delete § 108.10(b)(6) since subsection (b) implies that the list that follows is not complete.

Response

The Department agrees and deleted paragraph (6) and renumbered the section accordingly.

§ 108.11 (relating to time frames for good cause waiver determinations based on domestic violence)

IRRC questioned how the Department determined that 15 calendar days is an appropriate time frame to determine whether to grant a good cause waiver.

Response

The Department conferred with the Domestic Violence/TANF Task Force, which includes victims of domestic violence, advocates and Department staff, and jointly agreed that 15 calendar days is a reasonable time frame to decide whether to grant a good cause waiver.

§ 108.12 (relating to notice of good cause determinations based on domestic violence)

IRRC commented that § 108.12(a) is unclear as to when the Department will provide written notice of the determination regarding a good cause request and suggested that the final-form rulemaking state when this notice will be provided.

Response

The Department did not adopt this recommendation. During the Department's review of a request for a good cause waiver, an individual's status remains the same. Therefore, individuals are not disadvantaged while the Department reviews good cause claims. No adverse action is taken until the appeal period ends. Because the Department is already held to a 30-day time frame for making decisions in accordance with § 125.24(c) (relating to procedures), it is unnecessary to add an additional time frame to notify the individual about the decision. Further, it is standard policy and procedure to send a notice of eligibility determination as soon as possible after a decision is made.

Commentators noted that § 108.12(b)(2) contains a confusing clause suggesting that the Department may not be certain of the duration of a good cause waiver. They recommended that the Department delete the clause "If the Department is uncertain of the duration" or revise the clause to say "If the Department is uncertain of the duration of the need for the waiver."

Response

The Department agrees with the commentators and revised the clause in § 108.12(b)(2).

Commentators recommended that the Department add subsection (d) to include cross references to regulations that identify the specific notices that should be used.

Response

The Department revised § 108.12, as requested, by adding subsection (d) with cross references pertaining to notices under §§ 125.1 and 133.4 (relating to policy; and procedures).

§ 108.13 (relating to review of waivers)

IRRC commented that § 108.13(4) refers to an "approval process" and stated it is unclear what this "approval process" is or how it will be administered. IRRC recommended that the Department add the "approval process" to the final-form rulemaking.

Response

The Department agrees that the phrase "approval process" is unclear and, therefore, deleted this language. For clarity, this language was replaced with the "Department's decision."

§ 108.14 (relating to safeguarding information)

IRRC asked that the final-form rulemaking specify how an individual can obtain the release of information form provided by the Department.

Response

The Department revised § 108.14 to include instructions on how the form can be obtained.

§ 108.16 (relating to DRS responsibility for the FVI)

Commentators suggested that the Department revise § 108.16(a) to clarify the following: (1) that an individual who is in contact with the Domestic Relations Section (DRS) may personally request a family violence indicator (FVI) be placed on the file; and (2) that the Department will electronically instruct the DRS to place an FVI on a file in those counties where a personal appearance at the DRS is waived.

Response

The Department agrees with the commentators' suggested revision to § 108.16(a). The Department electronically informs the DRS that a family violence code has been placed in the Client Information System, which automatically places an FVI "behind the scenes" in the case record in the DRS Pennsylvania Automated Child Support Enforcement System.

IRRC commented that § 108.16(b)(2) stated that the DRS and other Department staff will not access a DRS file unless authorized to do so. IRRC asked who has the authority to grant these authorizations and when would they permit authorizations.

Response

The Department and its staff are obligated to obey State laws and procedures regarding safeguarding information. Under section 404 of the Public Welfare Code (62 P. S. § 404), the Department has the authority to make and enforce regulations to protect confidential information that is in its possession. Only employees properly concerned may use the records and files in performing their duties in accordance with Chapter 105 (relating to safeguarding information). In addition, the DRS employees are under the jurisdiction of the courts of common pleas and must adhere to State law regarding safeguarding domestic violence information in accordance with 23 Pa.C.S. §§ 4305 and 6112 (relating to general administration of support matters; and disclosure of addresses) and 23 Pa.C.S. Chapter 67 (relating to domestic and sexual violence victim address confidentiality). The Department revised subsection (b)(2) to clarify that the DRS and other Department staff will not access a DRS file unless access to the file is needed in the performance of their job duties.

§ 108.17 (relating to Agreement of Mutual Responsibility (AMR))

Commentators suggested that this section also include language to ensure that good cause waivers based on domestic violence are Federally recognized waivers. They asked the Department to add subsection (c) to state that the AMR serves as the services plan according to 45 CFR 260.55 (relating to what are the additional requirements for Federal recognition of good cause domestic violence waivers?).

Response

The Department agrees and revised subsection (b) to clarify that the AMR will identify the program requirement that is being waived. Additionally, the Department agreed to add subsection (c) to clarify that the AMR serves as the domestic violence services plan under 45 CFR 260.55.

In addition to the summarized changes and responses to comments, minor editorial changes were made for clarity in §§ 108.3, 108.5, 108.12, 108.13 and 108.15.

Regulatory Review Act

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on March 11, 2010, the Department submitted a copy of the final-form rulemaking, to IRRC and to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.1) and (j.2) of the Regulatory Review Act, on April 21, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 22, 2010, and approved the final-form rulemaking.

Finding

The Department finds that:

(a) The public notice of intention to adopt the administrative regulations by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(b) The adoption of the final-form rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

Order

The Department, acting under the authority of sections 201(2) and 403(b) of the Public Welfare Code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 108 and 187, are amended by amending §§ 187.22 and 187.27 and by adding §§ 108.1—108.18 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon final publication in the *Pennsylvania Bulletin*.

HARRIET DICHTER,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 2493 (May 8, 2010).)

Fiscal Note: Fiscal Note 14-513 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart A. ASSISTANCE POLICIES AND PROCEDURES

CHAPTER 108. FAMILY VIOLENCE AND TANF AND GA

GENERAL PROVISIONS

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§ 108.1. Purpose.

This chapter establishes rules and policies that apply to victims of domestic violence who are applicants for or recipients of TANF or GA cash assistance. These policies reflect the Department's commitment to address domestic violence among welfare recipients and are based on the Department's election of the FVO, authorized under Federal law.

§ 108.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

DRS—Domestic Relations Section—The section of a court of common pleas responsible for establishing and enforcing support orders.

Domestic violence—One or more of the following:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual.

(ii) Sexual abuse.

(iii) Sexual activity involving a dependent child.

(iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.

(v) Threats or attempts of physical or sexual abuse.

(vi) Mental abuse.

(vii) Neglect or deprivation of medical care.

FVI—Family violence indicator—A marker placed on Department and DRS records to indicate one or more individuals in the file are victims of domestic violence.

FVO—Family violence option—An optional provision in section 402(a)(7) of the Social Security Act (42 U.S.C.A. § 602(a)(7)), regarding eligible states; State plan, under which a state may elect to identify individuals with a history of domestic violence, refer them for counseling and supportive services and, upon a showing of good cause, waive one or more program requirements for these individuals.

Federal parent locator database—A National computer location system operated by the Federal Office of Child Support Enforcement, to assist states in locating noncustodial parents, putative fathers and custodial parties for the establishment of paternity and child support obligations, as well as the enforcement and modification of orders for child support, custody and visitation.

PACSES—Pennsylvania Automated Child Support Enforcement System—Pennsylvania's single Statewide automated data processing and information retrieval system for child support enforcement under Title IV-D of the Social Security Act (42 U.S.C.A. §§ 651—669b).

Work and work-related activities—Activities set forth in Chapter 165 (relating to Road to Economic Self-Sufficiency through Employment and Training (RESET) Program).

Work and work-related activity requirements—Requirements set forth in Chapter 165.

§ 108.3. Universal notification.

The Department will provide applicants and recipients with information about:

(1) Policies and procedures relating to domestic violence.

(2) Referrals to domestic violence services.

(3) Good cause waivers of certain TANF and GA program requirements.

(4) Specific information about program requirements if a waiver is not requested.

(5) Safeguards that may help the individual safely comply with program requirements, including placement of an FVI as defined in § 108.2 (relating to definitions) on Department and DRS files and other confidentiality protections.

(6) Opportunities to participate as a volunteer in work or work-related activities, including education and training, and to receive supportive services, under §§ 165.31 and 165.41 (relating to RESET participation requirements; and eligibility for special allowances for supportive services) if the individual receives a good cause waiver.

§ 108.4. Written notification.

The Department will provide applicants and recipients with written notification of the information described in § 108.3 (relating to universal notification).

§ 108.5. Individual notification.

(a) The Department will provide applicants with written notification of the right to claim good cause based on domestic violence.

(b) The Department will provide recipients who have not previously disclosed domestic violence with written notification of the right to claim good cause based on domestic violence as follows:

(1) Prior to referral to the DRS.

(2) When the Department has reason to believe a family or household member has been subjected to or is at risk of further domestic violence.

(3) Prior to imposing a sanction for noncooperation with child support requirements according to § 187.26 (relating to noncooperation).

(4) When compliance with work requirements as defined in § 108.2 (relating to definitions) is discussed according to § 165.51 (relating to compliance review) and prior to imposing a sanction for noncooperation with work requirements according to § 165.61 (relating to sanctions).

(5) Prior to denying, terminating, reducing or suspending benefits due to failure to comply with a TANF or GA program requirement.

(c) The Department will provide a recipient who has previously disclosed domestic violence with written notification of the right to claim good cause based on domestic violence according to subsection (b)(1)—(5), unless the recipient notifies the Department in writing that written notification of this right would place the recipient at risk of further domestic violence.

(d) Written notification must include an explanation of:

(1) The availability of referrals for assistance for victims of domestic violence.

(2) The availability of and procedures for requesting a good cause waiver of certain TANF or GA program requirements based on domestic violence.

(3) The confidentiality protections.

(e) The Department will provide oral notification to applicants and recipients of the right to claim good cause based on domestic violence as follows:

(1) At the application and renewal interviews.

(2) Prior to a referral to the DRS.

(3) When the Department has reason to believe a family or household member has been subjected to or is at risk of further domestic violence.

(4) At a compliance review under § 165.51 in which the recipient participates.

§ 108.6. Policy for applicants or recipients in immediate danger.

If an applicant or recipient is in immediate danger, the Department will:

(1) Provide a private space to allow the applicant or recipient to call a domestic violence hotline, if requested.

(2) Offer the applicant or recipient help in making arrangements for emergency shelter, medical care, transportation, child care and work.

§ 108.7. Requirements subject to waiver.

(a) The policies set forth in §§ 108.8—108.13 apply to good cause waivers of requirements for support cooperation, work, time limits, teen parents, verification and other TANF and GA program requirements, based on domestic violence.

(b) The Department may not waive the following TANF or GA program requirements except as provided in subsection (c):

(1) Minor child under § 145.41 (relating to policy).

(2) Specified relative under § 151.41 (relating to policy).

(3) Income under § 183.5 (relating to income verification).

(4) Resources under § 177.1 (relating to general requirements).

(5) Citizenship under § 149.23 (relating to requirements).

(6) Deprivation under § 153.41 (relating to policy).

(7) Enumeration under § 155.2 (relating to general).

(8) Identity under § 125.1 (relating to policy).

(9) Criminal status under sections 432(9) and 481.1 of the Public Welfare Code (62 P. S. §§ 432(9) and 481.1) regarding eligibility; false statements; investigations; and penalty.

(10) Residency under § 147.23 (relating to requirements).

(11) GA categorical eligibility requirement under § 141.61 (relating to policy).

(12) Signature on required forms, such as the application for benefits and authorization for release of information form under § 125.1.

(13) Permanent sanction under § 165.61 (relating to sanctions).

(14) Application for and cooperation in establishing eligibility for potential income under section 432.21(a) of the Public Welfare Code (62 P. S. § 432.21(a)) regarding requirement that certain Federal benefits be the primary source of assistance.

(c) The Department will determine whether to approve a request to waive one or more requirements in subsection (b)(3)—(14) on a case-by-case basis.

§ 108.8. Claiming good cause based on domestic violence.

(a) An individual may request a good cause waiver of a TANF or GA program requirement based on past, present or risk of further domestic violence, as defined in § 108.2 (relating to definitions).

(b) The Department will grant a good cause waiver of a TANF or GA program requirement if compliance with the program requirement would result in one of the following:

(1) Making it more difficult for the individual or family member to escape domestic violence.

(2) Placing the individual or family member at risk of further domestic violence.

(3) Unfairly penalizing the individual or family member because of domestic violence.

(c) The Department may grant a good cause waiver regardless of whether the alleged abuser is in the household.

§ 108.9. Time limits.

(a) An applicant or recipient may receive up to 12 months of TANF cash assistance that do not count towards the 60-month TANF time limit according to § 141.41(d) (relating to policy) based on past, present or risk of further domestic violence to the individual or family member. The months need not be sequential.

(b) Individuals may receive Extended TANF, as defined in § 141.52 (relating to definitions), if the individual or family member is or has been a victim of domestic violence or is at risk of further domestic violence according to § 141.53 (relating to eligibility based on domestic violence).

(c) Individuals may be eligible for cash assistance under this section regardless of whether the alleged abuser is in the household.

§ 108.10. Verification.

(a) An individual who requests a good cause waiver of a TANF or GA program requirement based on domestic violence shall complete the verification form provided by the Department.

(b) The Department will provide the verification form, in person or by mail, to an individual who requests the form and will instruct the individual to provide verification that may include one of the following:

(1) Law enforcement records.

(2) Court records.

(3) Medical or treatment records, or both.

(4) Social services records.

(5) Child protective services records.

(6) Third party verification from a public or private organization or an individual with knowledge of the circumstances including:

(i) A domestic violence service provider.

(ii) A medical, psychological or social services provider.

(iii) A law enforcement professional.

(iv) A legal representative.

(v) An acquaintance, friend, relative, or neighbor of the claimant, or other individual.

(c) If the individual cannot safely obtain verification described in subsection (b), the individual may affirm on the verification form provided by the Department that the individual cannot safely comply with a TANF or GA program requirement due to domestic violence.

(d) When an individual claims good cause based on domestic violence, the Department may not:

(1) Contact the alleged abuser.

(2) Require the individual to obtain a Protection from Abuse Order.

§ 108.11. Time frames for good cause waiver determinations based on domestic violence.

The Department will make a good cause waiver determination within 15 calendar days from the date the claim was initiated by the applicant or recipient.

§ 108.12. Notice of good cause waiver determinations based on domestic violence.

(a) The Department will provide written notice to the individual of its determination regarding the good cause waiver request.

(b) If the Department grants the waiver request, the notice will:

(1) State the program requirement being waived.

(2) Explain the duration of the waiver. If the Department is uncertain of the duration of the need for the waiver, the notice will explain that the waiver will remain in effect as long as necessary, subject to review every 6 months.

(c) If the Department denies the waiver request, the notice will:

(1) State which program requirements are not waived and the basis for the determination.

(2) State the legal authority for the denial.

(3) Explain the right to appeal.

(4) State what additional verification or information is needed to substantiate good cause and the time frame in which the information shall be provided.

(5) Explain that the individual shall comply with the program requirement for which the waiver was requested.

(d) The Department will follow the notice requirements in §§ 125.1 and 133.4 (relating to policy; and procedures).

§ 108.13. Review of waivers.

When the Department determines that a waiver of a TANF or GA program requirement based on domestic violence is appropriate, it will grant the waiver for as long as necessary, subject to review every 6 months as follows:

(1) An individual who verified domestic violence under § 108.10(b) (relating to verification) need not provide new or additional verification at the 6-month review if circumstances have not changed since the waiver was initially granted or since the last 6-month review.

(2) An individual who affirmed domestic violence under § 108.10(c) may provide verification under § 108.10(b) for the waiver to continue.

(3) An individual who affirmed domestic violence but remains unable to provide verification under § 108.10(b) may again affirm domestic violence on the verification form provided by the Department under § 108.10(c). The individual may receive a waiver for an additional 6 months.

(4) An individual who remains unable to provide verification under § 108.10(b) after 12 months may have the waiver continue by affirming domestic violence under § 108.10(c), subject to approval by the Department on a case-by-case basis. The individual's waiver and benefits will continue pending the Department's decision. If the waiver is approved, the individual may, if necessary, continue to affirm at each subsequent 6-month redetermination.

§ 108.14. Safeguarding information.

(a) Unless required by law or pursuant to the individual's written authorization, the Department may not disclose or release the following information about an applicant, recipient or family member who has disclosed domestic violence, has a Protection from Abuse Order or is at risk of further domestic violence by the disclosure of information:

(1) The residential address, the name and address of the individual's employer, education, training, or work program or other work activity, the name and address of the children's school and the identity and location of child care or medical providers.

(2) Whether the individual or family member is living in a domestic violence shelter and location of the shelter.

(3) The amount of benefits received by the individual or family member.

(b) The individual's written authorization must be provided on a form approved by the Department. The form may be provided to the individual in person or by mail. The form must include the name of the requestor, the information requested and the purpose of the request.

(c) The Department will place an FVI, as defined in § 108.2 (relating to definitions), on the electronic and paper files of an individual or family member who has disclosed domestic violence, has a Protection from Abuse Order or is at risk of further physical or emotional harm by the disclosure of confidential information.

§ 108.15. Alternate address.

(a) A victim of domestic violence may use an alternate mailing address if one of the following applies:

(1) The individual has applied for or received a good cause waiver based on domestic violence.

(2) The individual is at risk of further domestic violence.

(3) The individual is a participant in the Address Confidentiality Program administered by the Pennsylvania Office of Victim Advocate, under 37 Pa. Code Chapter 802 (relating to The Domestic and Sexual Violence Address Confidentiality Program).

(b) The Department will ask an individual who discloses domestic violence, has applied for or received a good cause waiver or is at risk of domestic violence, whether it is safe to send mail to the home address or whether it would be safer to send mail to an alternate address.

§ 108.16. DRS responsibility for the FVI.

(a) The Department will instruct the DRS to place an FVI in PACSES, as defined in § 108.2 (relating to definitions), for an individual who receives cash assistance and discloses domestic violence.

(1) For individuals who make a personal appearance at the DRS and request an FVI be placed in their files, the DRS shall place the FVI in PACSES.

(2) For individuals in counties in which a personal appearance at the DRS is waived, the Department will electronically inform the DRS that a FVI was placed on the automated client information system and directs DRS to place the FVI on PACSES.

(b) If the FVI is placed on the file:

(1) The DRS will not disclose information according to § 108.14 (relating to safeguarding information).

(2) The DRS and other Department staff will not access a DRS file unless access to the file is needed in the performance of their duties.

(3) The DRS will transmit the FVI to the Federal parent locator database as defined in § 108.2.

§ 108.17. Agreement of Mutual Responsibility (AMR).

(a) To ensure confidentiality, the Department will not record information about domestic violence on the AMR, as defined in § 123.22 (relating to definitions).

(b) If the Department has waived a TANF or GA program requirement based on domestic violence, the Department will identify the specific requirement that is being waived on the AMR. The AMR will not include the basis for the waiver.

(c) The AMR serves as the domestic violence service plan in accordance with 45 CFR 260.55 (relating to what are the additional requirements for Federal recognition of good cause domestic violence waivers).

§ 108.18. Referral for services.

When an applicant or recipient discloses domestic violence or requests a referral to domestic violence services, the Department will provide the individual with names, phone numbers and information about the services of local domestic violence agencies, which may include shelter, safety planning and counseling.

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 187. SUPPORT FROM RELATIVES NOT LIVING WITH THE CLIENT

SUPPORT PROVISIONS FOR CASH ASSISTANCE

§ 187.22. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Arrears—Past due and unpaid support.

BCSE—Bureau of Child Support Enforcement—The organizational unit in this Commonwealth responsible for supervising the State Plan for Child Support Enforcement under Title IV-D of the Social Security Act (42 U.S.C.A. §§ 651—669b).

Budget group—One or more related or unrelated individuals who occupy a common residence or would occupy a common residence if they were not homeless and whose needs and eligibility are considered together in determining eligibility for cash assistance under one category of assistance.

CAO—County assistance office—The local office of the Department responsible for the determination of eligibility for cash, Food Stamps and MA Programs.

Cash assistance allowance—The monthly family size allowance, reduced by the net income of the budget group. The family size allowance is described under § 175.23(a) (relating to requirements).

DRS—Domestic Relations Section—The division of a court of common pleas responsible for establishing and enforcing support orders.

Establishing paternity—The process that determines the legal father of a child.

LRR—Legally responsible relative—The spouse, including common-law, of the applicant or recipient of cash assistance, or the biological or adoptive parent of an unemancipated minor child for whom cash assistance is sought or received.

Obtaining support—Establishing, modifying or enforcing a support order.

Support—A judgment, decree or order whether temporary, final or subject to modification, imposed or imposable by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child or spouse, or both, which provides for monetary support, health care, arrears or reimbursement, and which may include other relief.

Unemancipated minor child—An individual who is under 18 years of age, or an individual 18 years of age or older but under 21 years of age, who has not graduated from high school, is not married and is in the care and control of a parent or caretaker.

§ 187.27. Waiver of cooperation for good cause.

(a) *Good cause circumstances*. Cooperation requirements may be waived for good cause. Requirements for granting a good cause waiver based on a claim of domestic violence, as defined in § 108.2 (relating to definitions), may be provided under §§ 108.7 and 108.8 (relating to requirements subject to waiver; and claiming good cause based on domestic violence). Other good cause circumstances include the following:

(1) The child was conceived as a result of incest or rape.

(2) Legal proceedings for the adoption of the child are pending before a court.

(3) The applicant or recipient of cash assistance is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption and the discussions have not progressed for more than 3 months.

(b) *Proving the good cause claim*. The applicant or recipient of cash assistance shall provide relevant verification.

(1) A good cause claim may be verified with the following types of evidence:

(i) A birth certificate or medical or law enforcement records which indicate that the child was conceived as the result of incest or rape.

(ii) Court documents or other records which indicate that legal proceedings for adoption are pending.

(iii) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to relinquish the child for adoption.

(iv) Medical records which indicate emotional health history and present emotional health status of the applicant or recipient or the child for whom support would be sought; or, written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the applicant or recipient or the child for whom support would be sought. Supportive evidence submitted from a mental health professional will be defined as statements written by individuals who have obtained licensure or certification, if applicable, or have received a degree in defined areas of mental health including psychiatry, social work, psychology, nursing, occupational therapy or recreational therapy.

(v) Court, medical, criminal, child protective services, social services, psychological or law enforcement records.

(vi) Statements from individuals other than the applicant or recipient with knowledge of the good cause circumstances, including a domestic violence service provider, a medical, psychological or social service provider, a law enforcement professional, a legal representative, an acquaintance, friend, relative or neighbor of the claimant or other individual.

(2) When the applicant or recipient initiates a claim of good cause, the Department, court or the DRS may provide help with obtaining verification. If requested by the applicant or recipient, the Department, court or DRS will provide help in securing the needed evidence by advising how to obtain specific documents that may be available and by undertaking to obtain specific documents the applicant or recipient is not able to obtain.

(3) An applicant or recipient shall provide verification of the good cause claim, as specified under paragraph (1)(iv)—(vi), within 30 days from the date the claim is made, except when the applicant or recipient cannot otherwise provide verification of the good cause claim as specified in paragraph (1)(vii)(C).

(i) In the case of an applicant, assistance will be authorized no later than 30 days following application when the applicant is claiming good cause and verification is not readily available or pending from a third party.

(ii) In the case of a recipient, the CAO will continue assistance if verification is not provided within 30 days and the delay is due to a third party.

(c) *Good cause determination*. The court or the DRS will make a determination within 45 days from the day the claim was initiated by the applicant or recipient of cash assistance. The Department will make a determination within 15-calendar days from the date the claim was initiated by the applicant or recipient. The Department, court or the DRS may approve additional days for the determination to be completed.

(1) If the CAO makes a determination on a good cause claim, the CAO will notify the applicant or recipient of cash assistance in writing of the final determination regarding the claim of good cause and the basis therefor and of the right to appeal under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings). If the good cause claim is denied, neither the Department nor the Bureau of Child Support Enforcement will attempt to establish paternity or obtain support for at least 30 days after the individual has been informed orally and in writing of the denial of the good cause claim.

(2) If the court of common pleas or DRS makes a determination on a good cause claim, the DRS will notify the applicant or recipient of cash assistance and the CAO of the final determination and the basis therefor and of the right to appeal under Chapter 275.

(3) When the CAO, court of common pleas or the DRS approve a waiver of the cooperation requirement based on a claim of good cause, the DRS will not attempt to establish paternity or obtain support.

(4) When good cause is determined to exist, the Department will review the circumstances upon which the good cause determination is based, at least every 6 months. If the good cause waiver was granted based on verification, no additional verification is required if circumstances have not changed since approval of the initial waiver.

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