

MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Regulatory Initiatives

Date: January 2, 2007

I am providing my analysis of five (5) regulatory initiatives referred by Council staff. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DOE Final Standardized Financial Reporting Regulation [11 DE Reg. 918 (January 1, 2008)]

The SCPD and GACEC commented on the proposed version of these regulations in November, 2007. The regulations were designed to implement H.B. No. 21 which directed the DOE to issue regulations requiring districts and charter schools to compile financial information on their websites and provide information in writing on request. The proposed version of the regulations contained the website provision but omitted the legislative requirement that the information be provided in writing on request. The Councils endorsed the proposed standards subject to including a “written request” standard.

The Department has now adopted final regulations with no amendment. It’s rationale for omitting the “written request” reference is that “these documents are public and subject to FOIA”. At p. 918. This is a rather weak rationale. Under the Department’s view, the statutory requirement that the information be provided in writing is superfluous and of no consequence. It would have been preferable to conform the regulation to the legislative mandate.

Since the regulations are final, and given general access to agency websites, I recommend no further action.

2. DOE Proposed Standard Certificate Regulation [11 DE Reg. 865 (January 1, 2008)]

The Professional Standards Board and Department propose to adopt a few discrete amendments to the standard certificate regulation. The rationale is “to provide clarification on the requirements for a Delaware educator to attain a second or subsequent certification.” At p. 865.

I did not identify any concerns with the proposed revision. Essentially, the content of existing §6.2 is moved, becoming new §3.5. A new §4.2 is added to clarify that educators applying

for a second or subsequent standard certificate must meet criteria for each additional standard certificate.

I recommend endorsement.

3. DSS Prop. Food Stamp Child Support Cooperation Regs. [11 DE Reg. 872 (January 1, 2008)]

The U.S. Department of Agriculture (USDA) offers states the option of requiring parents/caretakers to cooperate with the state's child support agency as a condition of receiving Food Stamps. The Division of Social Services (DSS) already requires such cooperation as a condition of participation in the TANF and child care programs. It now proposes to adopt the USDA option of requiring such cooperation as a condition of participation in the Food Stamp program.

I have several observations.

First, there are pros and cons to requiring parents to cooperate with the DCSE to pursue child support. The attached article describes some negative concerns linked to New York City's requirement of child support cooperation as a prerequisite to participation in its child care subsidy program. The article notes that low income beneficiaries risk losing their jobs if they must take time off to participate in court proceedings. Moreover, immigrants often fear any involvement in the court system and that anxiety may prompt them to forego Food Stamps. On the positive side, DSS posits that the requirement "will help facilitate the client towards self-sufficiency" and "may uncover unreported income". At p. 873. Reasonable persons may differ on whether the pros outweigh the cons of this initiative.

Second, consistent with federal regulations, DSS authorizes exceptions to cooperation based on good cause. However, the DSS standards are sometimes narrower than the corresponding federal regulations. The DSS definition of "domestic violence" at the bottom of p. 875 is as follows:

Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.

Consistent with the attached 7 C.F.R. 273.11(o)(2)(i)(B), the federal definition of "domestic violence" is broader:

For purposes of this provision, the term "domestic violence" means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual, sexual abuse, sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempt at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.

[emphasis supplied]

Contrary to the federal regulation, the DSS standard would disallow consideration of the following forms of domestic violence: 1) mental abuse; 2) neglect; and 3) deprivation of medical care. The DSS standard solely focuses on physical injury and sexual abuse and merits amendment.

Third, the federal regulation requires Delaware to waive the normal DCSE fees and costs of services if DSS implements this option. See attached 7 C.F.R. 273.11(o)(4). Consistent with the attached excerpt from the DCSE application, there is a \$25 annual processing fee which would ostensibly be precluded by the federal regulation. The DSS regulation should ensure conformity with 7 C.F.R. 273.11(o)(4) by including a recital that the DCSE shall not require payment of a fee or other cost for services from Food Stamp beneficiaries.

Fourth, the DSS regulation makes DCSE the final decision-maker of “good cause for refusing to cooperate” [§9094, Good Cause Determination] . In contrast, the federal regulations envision DSS as the final decision-maker with DCSE merely providing input:

(iii) Review by the State Child Support or TANF Agency. Prior to making a final determination of good cause for refusing to cooperate, the State agency will afford the State Child Support Agency or the agency which administers the program funded under Part A of the Social Security Act the opportunity to review and comment on the findings and the basis for the proposed determination and consider any recommendations from the State Child Support or TANF agency.

7 C.F.R. 273.11(o)(2)(iii). See also 7 C.F.R. 273.11(o)(2) [“Paragraph (o)(1) of this section shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency:...”]

Fifth, the DSS regulation ostensibly limits aggrieved Food Stamp beneficiaries to a DCSE hearing. See §9094, Administrative Hearing. Since DSS is the final decision-maker, the aggrieved Food Stamp beneficiary should be entitled to a DSS fair hearing authorized by 16 DE Admin Code 5000 and 9090.5.

I recommend sharing the above observations with DSS.

4. DSS Prop. TANF Employment & Training Program Regs. [11 DE Reg. 869 (January 1, 2008)]

The Division of Social Services proposes to adopt some discrete revisions to its TANF Employment & Training Program regulations. Consistent with the attached R.I. Kids County summary, HHS issued stricter TANF standards in 2006 [71 Fed Reg. 37453 (June 29, 2006)] which penalize states whose TANF caseloads fail to meet a federal formula. The federal standards are prescriptive in defining both expected total work participation rates and types of countable employment-related activities. The DSS table on the bottom of p. 871 compiles the expectations.

In general, the DSS standards appear to track the federal regulations. I have only two (2) recommendations.

First, DSS could consider substituting “Two Employable Parent Families” for “Two Parent

Families” in the heading of the second table on p. 870. This would conform to 45 C.F.R. 261.24(a)(2) which recites as follows:

The rate applies to the two-parent families with two work-eligible individuals. However, if one of the parents is a disabled work-eligible individual, we will not consider the family to be a two-parent family, i.e., we will not include such a family in either the numerator or denominator of the two-parent rate.

Second, since the current federal regulatory changes took effect in 2006, DSS could consider substituting “2006 and after” for “2002 and after” and “1999 and after” in the tables on p. 870.

I recommend sharing the above observations with the Division.

5. Dept. Of Insurance Prop. Use of Credit Information Reg. [11 DE Reg. 877 (January 1, 2008)]

On August 1, 2007, the Governor signed legislation [SS No. 1 for S.B. No. 31] restricting the use of credit scores in determining vehicular and homeowner policy eligibility and rates. The Department of Insurance is now issuing regulations to implement the legislation.

The attached January 2, 2008 News Journal article provides background on the law and proposed regulations. With some limitations, insurers can still use credit scores as part of other underwriting factors in assessing new policy applications. See Title 18 Del.C. §8303(a)(1). For existing policies, insurers may not make any “adverse underwriting decision” based on a credit score. See Title 18 Del.C. §8303(a)(2). However, insurers will be required by the regulations to offer policyholders the option of a credit score assessment to determine if it would result in a lower premium. Effective April 1, 2008, written notice of such option, and a form to request such an assessment, will be provided to policyholders annually. See Regulations, §§6.1.2, 6.1.3 and 13.

The regulations are comprehensive and consumer oriented. Consumer notices are prominent (18 point type) [§6.1.3]. Applications denied based on credit information must disclose the specific bases for the denial [§6.2]. Applicants can seek review of the adverse effect of a credit score through the insurer and proffer “extraordinary personal circumstances” (e.g. illness; identity theft) to “explain” a low score [§7.3].

I recommend endorsement subject to correction of two minor grammatical errors. In §6.4, substitute “a” for “an” before “new credit score”. In §6.1.2, substitute “an insurance score review” for “have their insurance score reviewed”.

Attachments

B:108bils
F:pub/bjh/legis/p&l2008/108bils