

KEVIN BLAUM, DEMOCRATIC CHAIRMAN  
AGING AND YOUTH COMMITTEE



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HOUSE OF REPRESENTATIVES  
GENERAL COMMISSION

**House of Representatives**  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG  
May 4, 1998

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Feather O. Houstoun, Secretary  
Department of Public Welfare  
333 Health and Welfare Building  
Harrisburg, PA 17105

Dear Secretary Houstoun:

I am writing on behalf of the Democratic Members of the House Aging and Youth Committee to express our strong opposition to the department's proposed Chapter 3800 regulations for Child Residential and Day Treatment Facilities.

The proposed regulations published in the Pennsylvania Bulletin on February 14, 1998, would consolidate eight chapters of children and youth regulations into a single generic regulation that will span, albeit with some exceptions, a broad range of residential and non-residential programs.

According to my calculations, close to 15,000 children and youth are affected by these regulations, not the 10,000 clients as estimated by the department. They include abused and neglected children and youth who have been adjudicated dependent; children and youth adjudicated delinquent; children and youth who have serious emotional or mental disorders and need psychiatric and psychological services; and children and youth with a diagnosis of mental retardation; pregnant minors needing the safe, supportive environment of a maternity home as well as delinquents ordered by a court to a secure detention facility, boot camp or wilderness program.

I appreciated your honoring the joint request made by Representative Leonard Gruppo and me to extend the public comment period so that we could benefit from additional public comment on the regulations.

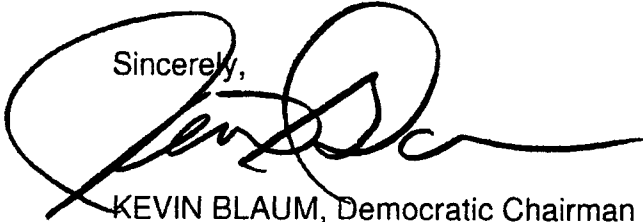
It is clear from the abundance, diversity, and thoughtfulness of the comments received that the additional input was needed and is extremely valuable. After reviewing the extensive comments on the regulations that were submitted by parents,

providers, government entities and child advocacy groups, I am convinced that far too many programs have been covered under the rubric of "child residential and day treatment facilities."

I look forward to working with the department, Independent Regulatory Review Commission, my colleagues in the Legislature, and all interested parties to address the concerns raised by these proposed regulations.

Thank you for giving the enclosed comments your serious attention and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Blaum", written over a horizontal line.

KEVIN BLAUM, Democratic Chairman  
Aging and Youth Committee

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**Comments on DPW Proposed Regulation #14-442  
Submitted by Representative Kevin Blaum  
Democratic Chairman, House Aging and Youth Committee**

I can appreciate the department's goal to streamline and simplify the licensing process by eliminating or reducing inconsistencies or duplication in its current regulations. However, it appears the department has far exceeded its goal and has sacrificed individualized care for the sake of uniformity. I can also appreciate the department's desire to reduce the multiplicity of licenses held by a single facility that serves diverse clients.

However, incorporating so many different programs into one chapter unfortunately has given the department justification to blur requirements for appropriate treatment, services and safeguards for certain youngsters to achieve consistency and uniformity. Merging so many programs for diverse populations---from those youngsters who are violent offenders to those who are victims of abuse and neglect or youngsters who suffer from serious mental disabilities---distorts and destroys the over-arching responsibility of the department to shape regulations that put the needs of children first.

Inadvertently, the attempt to streamline regulations and reduce the number of program regulations has superseded the interests of children needing diverse, *specialized* services. These regulations are so generic and non-specific as to client needs for specific populations that it appears the department is promoting a one-size-fits-all philosophy that is ambivalent about standards of practice. Can these programs serve the broad range of children and youth populations in the same facility, simultaneously? Is treatment an "add-on" service subject to contracts with county agencies or voluntary accreditation?

There has been no evidence presented by the department that national accrediting agencies with expertise in the various programs covered by these proposed regulations have been invited to review the proposal for comments. For purposes of discussion, I am enclosing excerpts from the 1991 standards of excellence from the Child Welfare League of America for residential group care services that provide valuable insights about the background, purpose of residential care for children and the significance of working with families whenever possible, regardless of the type of program. As a constructive suggestion, I am enclosing a memo identifying key national organizations that should be participating in these discussions and invite the department to consider seizing the opportunity to arrange for their involvement in public discussions. (See Attachment #1.)

Furthermore, the department has not presented evidence that any other state has folded so many diverse programs into a single entity without adversely affecting certain client groups. I contacted the National Association for Regulatory Administration in Saint Paul, Minnesota, to inquire if the organization is aware of any state's experience with a similar consolidation and was told the staff was unaware of one. Perhaps the department can explain what it means in point 25 of its Regulatory Analysis Form when it claims that the proposed regulation is "consistent with other states."

I am also deeply concerned about the department's plans, in its words, "*to relocate items currently in regulations that go beyond minimum health and safety to more appropriate locations such as contract standards, training and technical assistance programs and voluntary accreditation.*" In point 18 of the Regulatory Analysis Form, the department also indicates that "*some regulatory content relating to quality of care issues have been deleted from the proposed regulations*" and that county children and youth agencies "*may prefer to make their contract arrangements more specific.*"

I would like the department to specifically identify "those items that are currently in regulations that go beyond minimum health and safety" and which it believes are unnecessary to include in the proposed regulations. For example, will each county children and youth agency and each provider negotiate a contract to determine whether a child obtains prescribed psychological counseling? Would the county agency have to contact at a higher rate for whatever these "add-on" services might be? Does this represent an administrative cost as well as program oversight cost to counties? Are these contracts only with county children and youth programs or also with county mental health and mental retardation programs? What if a provider serves children from many counties? Could some children receive more and better services and treatment than other children simply because they come from different counties? Finally, why is the state divesting itself of its responsibility to establish and enforce basic principles and standards that assure children and youth and their families the services, procedures and treatment they need?

I would like to offer the following additional questions, observations and suggestions:

1. Alternative approaches to streamlining regulations.

Did the department consider any other approaches to eliminate unnecessary duplication, confusion or inconsistencies in regulations rather than folding eight program regulations into one? Was the department's primary goal to relieve providers of the need for multiple licenses rather than consistency or uniformity? If the department is serious about improving regulations, I certainly would point to the existing child day care regulations as an excellent model. The regulations for family, group and center day

care programs are formatted in a consistent, understandable way, but requirements are unique to the programs, taking into account factors such as location and numbers and ages of the children. The clarity in the organization of these regulations help both the licensor and the licensee.

2. Prioritizing the types of programs that currently lack regulations.

There seems to be consensus that regulations for day treatment facilities and wilderness programs are long overdue. However, it was also apparent that the day treatment facilities that provide alternative educational programs for certain youngsters do not seem to fit the residential program scheme. In fact, it seems that there are more words in the proposed regulations that say what they are not rather than what they are. Wouldn't it make more sense to have distinctly separate regulations for each of these two programs?

3. Adverse impact on specific populations.

The Juvenile Law Center and Pennsylvania Protection and Advocacy have provided detailed analyses of the specific areas in the proposed regulations that violate state or federal law or consent decrees in respect to issues involving education, health care, due process, mental health treatment reviews, and chemical and physical restraints. Rather than reiterate the extensive comments provided by these groups, I would urge the department to review these documents carefully. They provide historical and legal insights into the significance of certain elements in practice and existing regulations that cannot be ignored. It strikes me that their concrete examples of deficiencies in the regulations contradict the department's statement in point 14 of its Regulatory Analysis Form that "No group or individual is expected to be adversely affected by the proposed regulations."

4. Lack of specificity regarding policy statements, definitions, client characteristics and program description for certain facilities treating children with mental disabilities.

The proposed regulations do not define mental retardation, mental illness or a serious emotional disturbance. The existing regulations, on the other hand, that govern residential services for the mentally ill, for example, in 55 Pa. Code Chapter 5310, and for the mentally retarded in 55 Pa. Code Chapter 6400, provide definitions for the disabling conditions. An entire Subchapter of the 5310 regulations are set aside for children's services, which includes important elements involving goals, educational and community services, and parental involvement. The blanket elimination of the existing regulations and lack of specificity in the proposed regulations diminish the protections for youngsters with special needs.

The Arc of Pennsylvania, representing the needs of individuals with mental retardation, points out that the current Chapter 6400 regulations contain 15 areas included in an assessment of the child at Section 6400.121(e), which are eliminated by these regulations. The assessment covers the documentation of disability, strengths

and needs, likes and dislikes, level of personal and social adjustment and understanding of danger. In addition, certain rights protecting individuals with disabilities are dropped from regulation, such as the right to privacy, property, and protection from research projects.

I am enclosing with this letter a summary of recent cases handled by the Parents Involved Network which illustrates the pressing need to ensure adequate protections for specialized populations. See Attachment #2.

In addition, several articles are enclosed regarding incidents in 1993 at a private facility in Lebanon County that served mentally retarded youngsters. The news reports remind us of the need for the department to remain vigilant in overseeing facilities housing extremely vulnerable populations. See Attachment #3.

5. The absence of the department's principles for mental health services for children and adolescents as expressed in CASSP.

Enclosed with this letter as Attachment #4 is a January 2, 1997 document issued by the department that refers to the "Pennsylvania Child and Adolescent Service System Program" (CASSP) for mental health services for children and adolescents and their families. The document identifies six core principles that are supposed to operate in the service delivery system: services are supposed to be child-centered, family-focused, community-based, multi-system, culturally competent, and least restrictive or least intrusive.

Would "CASSP" be an example of the type of "item" that the department would "relocate" to a contract between a provider and a county agency? In point 8 of the Regulatory Analysis Form, the department states that the intent of the residential care or day treatment is "to help the children develop the ability to be restored to a family life situation." State regulations need to embrace the CASSP principles.

I have also enclosed a recent article from the New York Times that reveals a significant number of juveniles who suffer from mental illness, are not receiving appropriate services and are entering the criminal justice system. See Attachment #5.

6. Lack of clarity in definitions.

In reading the definition of "child day treatment center (facility)" there is nothing that specifically excludes an early intervention program from being considered as an entity under this definition. Is that the department's intent? On another point, does the department plan to regulate a maternity home only if the pregnant minor is adjudicated delinquent, dependent or has a serious mental illness or mental retardation?

7. Repeal of Chapter 3680 administrative requirements.

In the preamble to the proposed regulations, the department points out that it is deleting Chapter 3680, and claims that administrative costs associated with independent audits, hiring practices, personnel records and program requirements relating to criteria for admission of children will be eliminated. Additionally, certain provisions are eliminated relating to assurances that there is no conflict of interest in contractual arrangements when public funds are involved. Obviously, these elements were at one time considered important to the department. Could the department explain why these issues are not addressed in the proposed regulations?

8. Room temperature.

How did the department decide in Section 3800.89 that the indoor temperature of a residential facility can be as low as 58 degrees Fahrenheit when some programs may have very young children?

9. Exempting state-operated facilities from state regulations.

The department claims it will apply the proposed regulations "to the extent possible" in operating the state Youth Development Centers and Youth Forestry Camps. Does the department require its own facilities to adhere to certain standards and if so, which ones? Are these standards adopted as regulations? Is there any reason why these facilities should be exempt from state regulation?

10. Exempting private residential schools and drug and alcohol treatment facilities for children and youth.

To what extent do private residential schools and drug and alcohol residential programs for children and youth serving youngsters adjudicated dependent or delinquent currently comply with certain requirements relating to residential care and treatment? Can DPW point to safeguards for children and youth regarding treatment, services, and procedures that currently apply or that will apply to these programs? A recent article is enclosed as Attachment #6 regarding a private residential school over which the department apparently has jurisdiction. Clarification on this issue would be appreciated.

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Attachment #1 - *in file*



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RENEWAL ROOM

Attachment #2 - *in file*

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Attachment #3 - *in file*

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Attachment #5

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