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Counsel

March 17, 1998

Mr. Robert L. Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre:

I am writing to comment on the proposed rulemaking re: 55 PA code CHS. 3680, 3710, 3760, 3800, 3810, 5310, and 6400 as published in the Pennsylvania Bulletin, Vol. 28, No. 7, February 14, 1998.

I support the exclusion of licensed drug and alcohol facilities serving children from these regulations. The need for licensing specific to the drug and alcohol treatment services provided still needs to be maintained.

While these revised regulations address the health and safety issues of the facilities, **they are not sufficient for protecting the confidentiality rights of clients in licensed drug and alcohol treatment facilities, in accordance with 42 C.F.R. Part 2.**

Thank you for the opportunity to comment. If you have any questions or comments, please feel free to contact me.

Sincerely,

Jim Leake

Jim Leake, MHS
Eastern Region Director

JEL/js

114

March 21, 1998

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Department of Public Welfare
Robert L. Gioffre
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre:

I am writing to you as a parent of a child who has serious behavioral problems. My child has been in and out of treatment and programs for several years. It is very likely that she will continue to need services from a variety of programs for a very long time.

I am concerned that the proposed 3800 Regulatory changes your office is proposing will not adequately insure that my child receives the quality of services that she needs. As I look at the proposed regulations, it is clear to me that this document does not intend to insure that I am treated as a partner in developing services for my daughter. As parents, we fought very hard for this. Your regulations take that away from us and put us back in a position of blame.

I strongly urge you to revisit these regulations and write them in a way that is going to help children and families.

Sincerely,

Carolyn N Greene
Parent

Telephone No: (717) 392-6215
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Pennsylvania Association of Resources
for People with Mental Retardation

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FAX TRANSMISSION – 13 pps.

April 15, 1998

Mr. Robert L. Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Re: Response to Proposed Regulations on a new Chapter 3800 regarding Child Residential and Day Treatment Facilities
28 *Pennsylvania Bulletin*, Vol. 7, February 14, 1998, pages 953-976
28 *Pennsylvania Bulletin*, Vol. 7, February 28, 1998, page 1138 (correction)

Dear Mr. Gioffre:

This letter is a formal response from the Pennsylvania Association of Resources for People with Mental Retardation (PAR) to the above-referenced proposed rulemaking. We also thank you and Karen Kroh for meeting with Dr. Michael Rice, Jay Layman and me on March 5th to review this proposal informally. The meeting was very productive and exemplifies the type of working relationship that we believe makes sense when government is engaged in regulatory reform efforts.

PAR endorses the spirit of regulatory reform as set forth in Governor Ridge's Regulatory Reform Initiative (Executive Order 1996-1) and bases its comments on the principles outlined in this Order. We examined this proposed rulemaking for consistency among its authorizing laws and the various regulations which interrelate with it or which are similar in scope. We looked for instances in this proposal where the regulatory burden will be eased on the provider community without sacrificing essential public health and safety issues since this is a key goal of the Governor's initiative. Finally, we focused on how the proposal expects to achieve its objectives and if the means of doing so make sense in their practical application.

In reviewing our comments and recommendations, please note the following:

1. All of the provisions that we are not commenting on below we wish to go on record as supporting. Also, if this proposed rulemaking has the effect of consolidating licensing visits

and reducing the amount of time spent in duplicative oversight then PAR certainly applauds the Department for these efforts.

2. This proposed rulemaking adds or expands regulatory oversight (beyond the current 6400 regulations) in several significant areas which will have notable fiscal impact without any evidence that there will be a commensurable improvement in service provision.

3. It appears that the detailed oversight of some of the regulatory provisions has been lessened. However, until we see the Licensing Inspection Instrument (LII) that accompanies these regulations we will not know whether this assumption is accurate.

Recommendation: It is recommended that the Licensing Inspection Instrument (LII) be developed and accompany the regulations through the regulatory process since the LII has the effect of regulations in the licensing process.

With these general comments set forth, following are the specific comments on this proposed regulation:

COMMENTS:

Page 960 – 961.
§3800.2(g) Applicability.
The proposed rulemaking does not apply to any services operated directly by the Department, among other things. Why are state-operated facilities always exempt from the regulations?

Recommendation: If the answer to the above question is that there may be a potential conflict of interest with the state monitoring its own facilities, then it is recommended that the state-operated facilities be required to meet the same standards in another way that insures public accountability or that the state get out of the business of operating facilities.

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Page 961.
§3800.3(iii) Definitions.
The addition of the language "*...a serious emotional disturbance*" expands the application of this rulemaking beyond mental retardation and mental illness. Both mental retardation and mental illness already have expansive definitions.

Recommendation: Eliminate the expanded section of the definition which is the reference to "...a serious emotional disturbance."

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Page 962.
§3800.16(a) Unusual incidents.

Recommendation: In the June, 1996 Final Report of the Office of Mental Retardation's Planning Advisory Committee Subcommittee on Regulatory Reform, the recommendation was made that *"the term 'unusual incident' should be abandoned in favor of 'reportable incident' since the issue in regulations is reportability and not whether an incident is unusual or not. Reportable incidents should be defined in a general definition section."*

"An unusual incident is an . . . injury, trauma or illness of a child requiring inpatient or outpatient treatment at a hospital . . . ."

The 6400 and 3810 regulations currently require an unusual incident report to be filed when a child is admitted to the hospital. Adding the language *"outpatient treatment"* is a duplication of what is already included in the medical records. This addition would greatly increase paperwork and be a duplication of the medical records.

Recommendation: It is recommended that the added requirement of "outpatient" be eliminated and read as follows: "A reportable incident is an . . . injury, trauma or illness of a child requiring outpatient treatment at a hospital..."

The proposed revision in §3800.16(a) is an expansion of §6400.18 to include in the reporting as an unusual incident "*an assault on a staff person by a child that requires medical treatment for the staff person.*"

Why has the Department proposed that this expansion to staff safety be included in its scope? Providers already have protections for staff in all of the workers' compensation regulations under Labor and Industry that cover staff. Protecting the health and safety of staff is not stated in the purpose of the regulations which reads: "*to protect the health, safety and well-being of children receiving care in a child residential facility through the formulation, application and enforcement of minimum licensing requirements.*" There are already mechanisms to monitor staff in the private sector.

Recommendation: Any provision, such as this one, which is not related to the protection of the children receiving services should be deleted since they are not within the scope of these regulations. Therefore, please remove the following phrase from the proposed rulemaking: *"an assault on a staff person by a child that requires medical treatment for the staff person."*

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This proposed rulemaking also includes the "*abuse or misuse of a child's funds or property*" as an unusual incident. Most organizations are representative payees and report to the Social Security Department who maintains oversight of this function. If the agency is not the payee, the parent or outside party is payee and there are already oversight mechanisms in place.

Recommendation: Since oversight mechanisms are already in place, in the spirit of the Governor's Executive Order, it is recommended that such oversight not be duplicated in these proposed regulations and that the proposed provision related to "*abuse or misuse of a child's funds or property*" be eliminated.

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Page 962.
§3800.16(h) Unusual incidents: notification of parent.
"The facility shall immediately notify the child's parent... unless restricted by applicable confidentiality laws, regulations and court orders."

The current 6400 regulations allow 72 hours in which to provide the summary of the unusual incident report.

Recommendation: It is recommended that the proposed provision be modified to read as follows: *"The facility shall immediately notify the child's parent, guardian or custodian within 72 hours following a reportable incident relating to a specific child, unless restricted by applicable confidentiality laws, regulations or an individual's court order."*

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Page 962.
§3800.17 Incident record.
"The facility shall maintain a record of. . . suicidal gestures . . . ."

The recommendation given below is how this issue is currently treated. We are not aware of any evidence that this has not worked well. Certainly, "suicidal gestures" will be extremely difficult to define and will result in multiplying the paperwork. There needs to be very good evidence that this is a necessary addition to the regulations before adding this provision.

Recommendation: It is recommended that *"suicidal gestures"* be replaced by *"...an attempt taken by the child to commit suicide"* and be placed under §3800.16(a).

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Page 962.
§3800.20. Waivers
In this proposed rulemaking there is no requirement for the Department to respond within a certain period of time to waiver requests. Waivers are usually requested for a purpose which would benefit the child. DPW needs to provide assurance of a reasonable response time so that the appropriate supports can be given in a timely way. DPW has indicated that such a time frame would more appropriately be included in the proposed revisions to the current Licensing Act.

Recommendation: It is recommended that a 30-day time frame for the Department's response to waiver requests be included in whatever document is appropriate, whether it be in this proposed rulemaking or in the Licensing Act. In addition, if the Department does not approve or deny the waiver within the 30-day timeframe, the waiver should be deemed approved.

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Page 963.
§3800.32(f). Specific rights.
"A child shall have the opportunity to visit with family at least once every 2 weeks, unless visits are restricted by court order."

It is important that in all regulatory provisions the Department continue to emphasize individualization through the person centered planning process. This provision sets forth a "one size fits all" prescription which runs counter to individualized planning. Some children may need several visits a week with family while for others even two weeks may not be

clinically appropriate. To require court orders to be the only way to vary from such a prescriptive regulation is sure to decrease the ability to individualize services.

Recommendation: The frequency of visitations with family should be identified in the individual's person-centered plan, not in regulation. It is recommended that the language be changed to read: "*A child shall have the opportunity to visit with family as set forth in the individual's person-centered plan (ISP).*" An even better alternative would be to delete this section and include it as part of the Individual Service Plan (ISP), §3800.223(5).

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Page 963.
§3800.54(d) Child care supervisor.
In this proposed rulemaking the qualifications for a child care supervisor are: *(1) "A bachelor's degree from an accredited college or university and 1 year work experience with children"* and *(2) "An associate's degree or 60 credit hours from an accredited college or university and 3 years work experience with children."*

There is no clause which would grandfather supervisory staff who are already functioning successfully as program supervisors. (Child care supervisor, as defined in the published regulations can not be confused with Program Specialist, as identified in the current 6400 regulations.)

In addition, there are many qualified staff who are extremely effective in supervising staff who work with children, who are not college or associate degree graduates. As a result of significant experience they are very capable of communicating and working successfully with staff in a supervising role.

Recommendation: It is recommended that a third qualification be added to read: "*(3) A high school diploma and four years work experience with children.*" There should also be a grandfather clause added for current employees.

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Page 963.
§3800.55(h) Child care worker.
"A child care worker who is counted in the worker to child ratio shall be 21 years of age or older."

This proposed rulemaking makes it impossible to employ an 18-20 year old individual as a child care worker. This change has a significant impact on financial and human resources for all facilities currently regulated under Chapter 6400.

Providers get some of their more capable staff at younger ages because as they get older they move on to something else that gives them more pay. At a time when we have difficulty finding staff to work for the wages available, it is counterproductive for the Department to arbitrarily raise a barrier to hiring 18-20 year old staff who may be as capable as 21 year old staff. This arbitrary imposition of a 21 year old age limit significantly decreases the pool of available people willing to work as child care workers. In addition, what is the research that shows that 18-20 year old staff pose more health and safety risks than 21 year old staff.

Recommendation: It is recommended that this new restriction regarding 18-20 year old staff not being included in the ratio be removed. We agree that it is reasonable to restrict hiring not to include individuals under the age of 18, but beyond that, it is recommended that the Department not place additional restrictions on who works and allow private providers to base the choice of who they hire on competence, not on age.

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Page 963.
§3800.57(b)(c)(e)(f). Staff training.
The proposed rulemaking on training states: ***"Current child care facility regulations do not specify the amount of training time that a new employee must have prior to working alone with children. Current regulations do specify training content areas that must be covered in an orientation for new employees. Current regulations do specify that in addition to the orientation, a new employee must receive 40 hours of training during the first year of employment."***

This statement is misleading since this proposed rulemaking consolidates regulations that do not require 40 hours of training. For example, §6400.46(d) states: ***"Program specialists and direct service workers who are employed for more than 40 hours per month shall have at least 24 hours of training relevant to human services annually."***

There is no disagreement that staff and volunteers need to be trained prior to working in their respective roles with children. However, the required hours of training are significantly increased from the current 6400 regulations (24 to 40). While there is an increased cost to the facility to employ the teacher(s) to provide the additional hours of instruction, there is a

significant increase in costs to the facility in order to release staff for the training and provide staff coverage, usually in an overtime status. These costs are significant when there is an almost doubling of the training requirement. In addition, the Department has frequently stated that it wants to move toward outcome-based measurements. This requirement of a certain number of hours of training is still process-oriented rather than outcome-oriented.

Recommendation: The proposed rulemaking should stay at 24 hours. Training, as it is defined, is related more to quality than basic health and safety.

While some private providers are training staff to the extent of the proposed regulations, many providers do not provide more than the 24 hours of training that are currently required in the 6400s. The statement in the regulations that *"the cost of training is expected to be comparable to what agencies are currently spending"* is not accurate. It should read that *"the cost of training is expected to increase nearly double for those agencies who currently provide 24 hours of training as required under the Chapter 6400 regulations."*

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Page 963.
§3800.57(g). Staff training.

This proposed rulemaking requires first aid, Heimlich and CPR training every year. The current standards for renewal of such training by organizations such as the American Heart Association and the American Red Cross, who provide such training and certification, varies from this proposed regulation. Why is this being changed from current regulation? There will be thousands of dollars in added expense for staff training and for staff coverage to accommodate a regulatory addition which goes beyond the standards set by the experts in the field. Also, CPR certification includes Heimlich, so it is unclear why Heimlich is shown separately from CPR.

Recommendation: That the proposed rulemaking read as follows: *"Each staff person who will have direct contact with children, shall maintain current certification in first aid and CPR."*

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Outside In School

of
EXPERIENTIAL EDUCATION, Inc.

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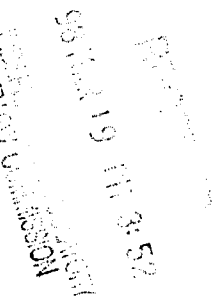

To: Mr. Robert Gioffre, DPW

Fax To: (717) 787-0414

From: Michael C. Henkel, Director
Outside In School, Inc.
PO Box 639, 303 Center Avenue
Greensburg, PA 15601 (724) 837-1518

Fax From: (724) 837-7680
Transmittal Date: March 16, 1998
Number of pages, including cover: 2

Dear Mr. Gioffre,

I am writing to express some concerns we have with the new 3800 regulations as published in the Pennsylvania Bulletin, Volume 28, Number 7, Part IV, on Saturday, 2/14/98. Outside In is a 24 bed residential facility for dependent/delinquent teenage boys in Westmoreland County. We utilize wilderness expeditions as a large part of our therapeutic intervention strategy.

Regarding 3800.16, Unusual incidents, we recommend that the word "physical" be inserted to have the second clause read: "a *physical* action taken by a child to commit suicide". This would prevent a verbal tirade from being interpreted as an action. Also consider rephrasing the clause "abuse or misuse of a child's funds or property" to indicate " by who". Who are we to be concerned about? The child? The parents? The treatment facility staff?

Regarding 3800.32 (f), we recommend inserting the words "on an average of" to have the sentence read "A child shall have the opportunity to visit with family on an average of once every two weeks...". Our program routinely utilizes three-week wilderness trips to remote locations during which there is no visitation. However, we offer weekly visitation for three consecutive weeks between trips. The number of visits per six-week cycle is the same and a healthy trend toward appropriate levels of homesickness is fostered in children and parents alike.

Regarding 3800.54(d), we have strong objections. We currently employ three of the finest individuals in the child care industry as child care supervisors and none of them have any college degrees. Their superior job performance has made them obvious candidates for advancement and the soft skills they bring to their work far exceeds the fruit of any college coursework. Each of them has joined us as a second career and they are rich in life experience, patient and compassionate with our students and excellent role models for

students and young staff alike. Please, for the sake of the children we serve and the new employees coming into this field, add a third subsection which reads "two years of exemplary service in a particular

child care setting or equivalent life experience". Let good people assume leadership roles based on their abilities! In the same vein we support 3800.55(g).

Regarding 3800.55(b), we believe this is simply a waste of a great deal of good money! Now, for eighteen students, we will have two overnight security guards. We are constantly fighting to keep the one we now have awake. Believe me, more overnight awake staff in these ratios is just bad management. The 3810's allowed for a mix of awake and asleep staff – good thinking! This is an excellent example of where the 3810's were more appropriate for our specific population.

Regarding 3800.57(a), please insert the word "alone" so the opening clause will read "Prior to working alone with children...". Without the "alone", this requirement only obstructs the utilization of new staff and will result in a significant increase in spending. New staff orientations are best done within, not prior to, the work environment. In this field, you never know if someone is going to stay or not until they get around the kids for a while. Our crisis intervention training is a twelve-hour package and it is grossly inefficient to require every staff to have this training prior to working with the students.

Regarding 3800.57(b), please change "within 60-calendar days" to read "within 120-calendar days". We are a small agency and we are aggressive about staff training but the 60-day deadline is unrealistic and will only serve to increase costs significantly.

Regarding 3800.57(b), (c), and (f), please modify the hours necessary to reflect multiples of 8, not 10 Eight hours is a normal work day in most settings and much more realistic considering the scheduling difficulties inherent in staff training.

Thank you for your consideration of these matters. I am,

Your servant,

Michael C. Henkel, Director

Woods Services

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April 2, 1998

Mr. Robert Gioffre
Office of Children, Youth and Families
Health and Welfare Building, Annex
Post office Box 2675
Harrisburg, Pennsylvania 17105-7756

Dear Mr. Gioffre:

Please consider the following as our response to the invitation extended in the February 14, 1998 Pennsylvania Bulletin to comment on the *proposed* Chapter 3800 Child Residential and Day Treatment Facilities regulations.

In reviewing the Chapter 3800 regulations it is evident that the new regulations allow for increased flexibility in providing services to children when compared to the current Chapter 6400 and 3810 regulations. However, while the regulations, as published, attempt to reflect the direction of the February 6, 1996 Executive order 1996-1 [Regulatory Review and Promulgation] in protecting the "public health and safety", many of the requirements, go well beyond the issue of public health and safety in commanding and controlling implementation. In addition, there are several changes within the proposed chapter that will significantly **increase** the financial impact of implementation.

Where there appears to be flexibility however, there is much concern as to how the regulations, when promulgated, will actually be able to be implemented, given the development of the Interpretive Guidelines. Will there be opportunity for stakeholder input in the development of the interpretive guidelines? Also, and related to this issue, is the concern as to how the issue of quality of service will be measured. Will the provider be responsible for developing a 'Plan of Excellence' by which their program will be measured and evaluated, or will the Department, through its contract with the County mandate what will be considered as the measurement of quality? In light of the original discussion surrounding this process, it is hoped that the Provider will be responsible for designing and implementing its plan for quality.

As the proposed requirements are different for the current development of the Individual Habilitation Plan [6400 Regulations] and the Individual Service Plan [3810 Regulations], when the new 3800 Regulations are promulgated, will there be a phase-in time for the

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Founded in 1913 as The Woods Schools

change over to the new requirements...for instance six months? If it is anticipated that all plans must be immediately changed, it will be a significant burden on staff as well as a significant **increase** in financial impact.

Please consider the following as our questions and concerns relating to specific sections of the proposed chapter. [Note: underlined text indicates new text added to the regulations as published which were not a part of the final draft prior to publishing.]

3800.3. Definitions.

The definition for *child* currently has three qualifiers. As you may be aware, and as parents/advocates become better acquainted with legislation and educational rights, an increasing number of children are being awarded 'compensatory education' by the Courts. The compensatory education is awarded due to the recognition that appropriate educational services were not provided during a specified period of time of a child's eligibility and are therefore added at the end of the individual's educational experience. As an individual may receive educational funding until the age of 21, it is entirely possible that the individual may be eligible for educational funding beyond 21 years of age. The definition does not allow for this situation, given the likelihood that it will more frequently. *It is suggested that a fourth qualifier be added that allows for the compensatory education.*

3800.16(a). Unusual Incidents. .....requiring inpatient or outpatient treatment at a hospital; ....assault on a staff person by a child that requires medical treatment for a staff person; abuse or misuse of a child's funds or property; ....

The regulations [6400 and 3810] currently require an unusual incident report to be filed if a child is admitted to the hospital. To file a report for each outpatient visit will significantly increase the amount of paperwork. Is it possible to define, or clarify, what constitutes an outpatient visit? Is a report necessary for each time a child visits the outpatient department for a chronic illness or disability, doctor consult, etc.? Is there duplication of effort in that an incident report **[3800.17]** must also be filed for "injuries, traumas, and illnesses that do not require inpatient hospitalization, which occur at the facility"?

Why is the Department concerned about staff safety when the regulations are designed and to be implemented for the 'safety and wellbeing' of children? If the attempt to add this language is to guard for reporting of a child's injuries received as a result of an assault on staff, the unusual report will be filed as currently stated in this section "....injury, trauma, or illness of a child...".

Misuse or abuse of funds is identified in the current regulations. This appears to be misplaced and if necessary to be included, should be placed within its own section. Definition is needed as to what will require a report, e.g. misplacing a toy, stealing of children's funds for staff use, etc.

3800.16(c). Unusual incidents. "The facility shall.....to immediately report unusual incidents".

Please define 'immediately' in regards to time-frame. For instance the current 6400 Regulations provide for 72 hours in which to provide the summary of the unusual incident report. While an initial report of the incident can be sent immediately, any substantive report may take a period of time to complete. Therefore, a time frame for completion is important, both for the Provider as well as the evaluators interpreting compliance.

3800.17. Incident Record. "The facility shall maintain a record of ..... suicidal gestures;...."

Suicidal gestures should be defined. Will a report be required when a child makes a statement which is clearly designed for staff attention, made out of frustration, etc., where there is clearly no plan or process involved, and the professional staff responsible has determined that there was no intent? 'Suicidal gesture' could be replaced by 'suicidal attempt, excluding verbal statements'. Perhaps this is better placed under 3800.16(a) by stating, *"...an action or attempt taken by the child to commit suicide;"*

3800.20. Waivers. Currently requests for waivers are open-ended in terms of responses from the Department. Time frames for a response by the Department to a request for a waiver should be added.

3800.32(f). Specific Rights. "A child shall have an opportunity to visit with family at least every two weeks...court order".

Many of the children in placement are there as a result of family issues. Visitations on a prescribed basis may be clinically inappropriate. It seems that visitations, rather than mandated 'every two weeks', should be based on the number of optimal visits based on the developing status of child and family relationships. It is suggested that this section be deleted and included as part of the Individual Service Plan (ISP), **3800.223 (5).** It is assumed that the word 'opportunity' only implies the facilities responsibility to facilitate visitation and not to transport, supervise home visitation, etc. If the latter were to be true, there would be a significant **increase** in program costs.

3800.54 (d). Child Care Supervisor.

There is no allowance for *grand parenting* of supervisory staff who are already functioning successfully as program supervisors. [Child care supervisor, as defined in the published regulations can not be confused with Program Specialist, as identified in the current 6400 regulations].

In addition, there are many qualified staff who are extremely effective in supervising staff who work with children, who are not college or associate degree graduates, but as a result of significant experience are well able to communicate and work with successfully with

staff in a supervising role. It is proposed that a section **3800.54(d)(3)** be added which states: *A high school diploma and four years of work experience with children.*

3800.55(h). Child Care Worker. "A child care worker who is counted in the worker to child ratio shall be 21 years of age or older".

This language therefore makes it impossible to employ an 18 – 20 year old individual as a client care worker. This change has significant financial and human resources impact on all facilities currently regulated under Chapter 6400.

Research needs to be presented as to why an 18 year old is any less effective than a 21 year old client care worker as it effects the 'health and safety' of the child. In speaking with facilities, it is apparent that 18 – 20 year olds are employed and their work habits and skills are, on the average, as good as the average 21-year-old. Is this arbitrary decision open for age discrimination, as the minimum education level required is a high school diploma or G.E.D.

The pool of people available and willing to work as child care workers are limited in both the rural areas as well as the city and suburban areas. To impose a 21 year-age limit significantly decreases the pool of people available.

If the age requirement is not changed, grand parenting must be considered.

It is suggested that the age requirement for a child care worker be reduced from 21 *to 18 years of age.*

3800.56(d). Supervision. "The requirements in .....if the facility serves 12 [was 8] or fewer children, and there are no children in an adjudicated delinquency status at the facility and ...."

On what basis is the child who is in an adjudicated delinquency status any more likely to elope, or cause other problems for the facility than any other child who may be placed against his or her will? It is recommended that this phrase *be deleted.*

3800.57(b), (c), (e) and (f). Staff Training.

There is no disagreement that staff and volunteers need to be trained prior to working in their respective roles with children. However, the required hours of training are significantly increased from the current 6400 regulations [24 to 40]. While there is an increased cost to the facility to employ the teacher(s) to provide the additional hours of instruction, there is a significant **increase** in costs to the facility in order to release staff for the training and provide staff coverage, usually in an overtime status.

3800.57(b). Surfaces.

This section is significantly expanded regarding the facilities' responsibility to assess for lead poisoning. While the intent is understandable, there will be significant financial impact on those older facilities who now must test their exterior paints as well as the play and recreational areas.

3800.106(a). Water Areas

Facilities are responsible for the liability associated with their buildings and grounds. Most communities have zoning ordinances that require pools to be fenced and locked, when not in use. In addition, most facility insurance policies will require the same. However, new to the regulations is the requirement to fence and lock ponds and lakes on the facilities' campus. Not only does this appear to be very institutional looking, but it also represents a significant **increase** in the financial impact to the facility. *The requirement to fence and lock ponds and lakes should be deleted from the section.*

3800.121(b). Unobstructed Egress

While the requirement is understandable, it is assumed that a waiver, under **3800.20** will be possible given certain populations of children served, where not locking the door may be far more dangerous to the children than having a door with a locking mechanism.

3800.141(2). Child Health and Safety Assessment.

It is understood that Section 141, in effect, replaces the requirements for a Life Health Care Plan as identified in the 6400 regulations. For (2), "Known or suspected suicide.....attempts *or gestures* and emotional.....". It is suggested that *or gestures* be deleted, as it is covered in suicidal attempts. It is also consistent with the recommended change for **3800.17.**

3800.143(12). Child Physical Examination.

Health Education needs to be defined. During the physical examination there is little time for significant health education, on a 1:1 basis.

3800.145. Tobacco Prohibited.

For facilities that provide adolescent and adult services [remaining under the 6400 Regulations], this section creates a conflict. 6400 Regulations currently allow the adult individual to make the choice of whether to smoke or not. Of concern, is the definition of 'premises of the facility'. It appears to be clear that if the facility is located on a specific lot within the community, the 'premises' would be considered to be that specific lot. However, where there are a number of residential units [licensed under 3800s or 6400s] in a campus setting, and given your current interpretation [telephone call of 4/1/98], 'premise of the facility' would be considered as the entire campus. Thus, individuals

receiving services through programs licensed under the 6400 regulations would be permitted to smoke, if they chose, but where, if the 'premises of the facility', as defined under 3800 regulations, is the entire campus? *Clarification is needed as to how this licensing conflict will be handled.*

In addition, we have had the experience of children being admitted where they have a long history of smoking and may well be addicted. Is it possible that a 'window of time' can be created for the newly admitted individual to cease smoking, through the introduction of smoking cessation programs, etc. Adjustment to a new environment in addition to all of the behavioral difficulties that the individual presents with, along with the necessity to stop smoking 'cold turkey' may only further complicate his/her initial adjustment.

A final issue with this section concerns the individual who continues in placement beyond the age of 18, where he/she is enrolled in education through the age of 21, or longer if compensatory education time has been awarded. The individual is now an adult and therefore has the right to make a choice of smoking or not. If the entire campus is non-smoking, it is not an issue. However, in light of our first response concerning conflict between regulations, if adults are permitted to smoke under the 6400 regulations, should the individual not also be able to smoke under the 3800 regulations? This may potentially be an issue of discrimination on the part of the Provider.

Behavior Intervention Procedures [page 969]

For what reasons did the Department rename this section? The section was previously entitled Crisis Intervention Procedures.

3800.201(a). Behavior Intervention Procedure

It is suggested that this be rewritten in order to modify the meaning to one of positive influence. It is recommended that **3800.201(a)** read *"A behavior intervention is any restrictive procedure used solely to positively influence the behavior of the person".*

3800.202(a). Appropriate Use of Behavior Intervention Procedures. "A behavior intervention ....be used in a punitive manner or for the convenience of staff."

Please define *punitive manner.* Is 'punitive manner' defined by the Treatment Team or by the child? If by the child, the facility may well be in conflict with the evaluators monitoring the implementation of the regulations. *For the convenience of staff* replaced the phrase "or as a substitute for program". Implementation of behavior interventions should never be used in place of program; however, the phrase "or the convenience of staff" is clearly open to interpretation. Staff must have the ability to be flexible within their clinical and work role and as they carry out the treatment plan.

3800.202(b). Appropriate Use of Behavior Intervention Procedures. "A behavior intervention procedure....from injuring himself *or others*".

The phrase *or others* was deleted from the published regulations and needs to be re-inserted. We are aware that a subsequent Pennsylvania Bulletin has indicated same.

3800.205(a). Staff Training.

While the regulations in this section of the chapter are somewhat more flexible than the existing 6400 Regulations, there is great concern as to what the real impact will be given in that the language reads **"If behavior intervention procedures are used each staff person shall have completed and passed a Department approved training program within the past year in the use of behavior intervention procedures".** At issue is, under the current 6400 and 3810 Regulations, facilities have been able to train their staff to implement the programs designed by the Treatment Teams. The intervention procedures, along with the entire ISP [IHP for 6400] is reviewed by licensing personnel as part of their annual program review. This has been the procedure for several years. Why does the department believe that this must change? How does the mandate of a Department Training Program, as part of the regulations, relate to the "health and safety of the child", as referenced in the Executive Order 1996-1?

In addition, who within the Department will develop the training course? What is their expertise and their philosophical approach in developing and implementing behavioral intervention programs?

If each staff person of each facility must be retrained each year by the Department, there will be a significant **increase** in the financial impact to the facility. *It is recommended that this section be rewritten to allow the facility to continue to train their staff as part of their staff training program as is being done currently* since behavior plans and their implementation are monitored yearly by the licensing evaluators.

3800.209. Chemical Restraints.

The Department has stated that they carefully reviewed all of the information submitted during the information gathering period and that the "proposed amendments will protect child health and safety, while allowing agency staff the flexibility they require to manage an orderly program" [955]. This section remains unchanged from the current 6400 Regulations, and is significantly more restrictive than the current 3810 regulations.

In considering the use of chemical restraints and manual restraints, one should have the flexibility to utilize the most appropriate procedure given a specific behavioral incident in time. For a person to be manually restrained by four or five individuals for a long period of time may be more dangerous and more demeaning to the individual than the use of a chemical restraint. While the Department's regulations permit the use of a chemical restraint, it is so prescriptive, it is, in effect, impossible to administer a chemical restraint. Again, it appears that the department has gone beyond the issue of 'health and safety'.

This section does not allow for flexibility and what may be best in light of professional judgement. This section should again be reviewed

3800.242(1)(iii). Content of Records

The current language requires that a 'current' picture be available. It is recommended that the dated photograph language be changed to be at least two years, instead of one year, if the current language is not reinserted. This represents a significant **increase** in the financial impact to the facility in regards to staff and related duplication of picture costs.

I hope that the above is helpful to you as you and your team review the comments received and consider modifications to the regulations as proposed. If you should have questions, please feel free to contact me at your earliest convenience. Thank you.

Sincerely,

David M. [Mike] Rice, Ph.D.
Vice President
Behavioral Health Services

cc: Ms. Nancy Thaler, OMR

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

98 FEB -6 PM 1:44

INDEPENDENT REGULATORY REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE 1927

Copy below is hereby approved as to form and legality. Attorney General

BY: _____
(Deputy Attorney General)

_____
Date of Approval

☐ Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Department of Public Welfare
(Agency)

LEGAL COUNSEL: _____

DOCUMENT/FISCAL NOTE NO. #14-442

DATE OF ADOPTION: _____

BY: _____

TITLE: Secretary of Public Welfare
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: _____

2/6/98
Date of Approval

(Deputy General Counsel)
~~(Chief Counsel, Independent Agency)~~
(Strike inapplicable title)

☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

Department of Public Welfare
Office of Children, Youth and Families
[55 PA Code Chapter 3800]
Child Residential and Day Treatment Facilities

Effective Date

The Chapter 3800 work plan projects January 1999 as the date when the new Chapter 3800 regulations will take effect.

Sunset Date

No sunset date has been established for these regulations.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Department of Public Welfare, Mr. Robert L. Gioffre, P.O. Box 2675, Harrisburg Pennsylvania 17105-2675, phone (717) 787-7756, fax (717) 787-0414 within 30 calendar days after the date of publication in the Pennsylvania Bulletin. All comments received within 30 calendar days will be reviewed and considered in the preparation of the final regulations. Comments received after the 30-day comment period will be considered for any subsequent revisions of these regulations.

Regulatory Review Act

Under § 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L.73, No. 19) (71 P.S.§§745.1-745.15), the agency submitted a copy of this proposed regulation on _____ to the Independent Regulatory Review Commission and to the Chairmen of the House Committee on Aging and Youth and the Senate Committee on Public Health and Welfare. In addition to submitting the regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed regulation, it will notify the agency within 10 days of the close of the Committees' comment period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The Act specifies detailed procedures for review, prior to final publication of the regulation of objections raised, by the agency, the General Assembly and the Governor.

#14-442

PROPOSED RULEMAKING
55 PA CODE CH. 3680

Administration and Operation of a Children and Youth Social Service Agency

§3680.1. Applicability.

(a) With ~~three~~ four exceptions, this chapter applies to the administration and operation of an agency, whether public or private, for profit or not-for-profit, which provides the social services specified in subsection (c). This chapter does not govern the administration or operation of probation offices; county children and youth social service agencies governed by Chapter 3130 (relating to administration of county children and youth social service programs); child residential and day treatment facilities governed by Chapter 3800 (relating to child residential and day treatment facilities); or child day care facilities governed by Chapters 3270, 3280, 3290 and 3300.

~~(b) Agency licensure or approval under this chapter is required — regardless of whether or not the social services provided are subject to licensure or approval under other chapters promulgated by the Department as are listed by example in subsection © , because this chapter establishes the administrative requirements under which agencies identified in subsection (a) shall operate.~~

© Social services provided for a child by an agency subject to the requirements of this chapter include, but are not limited to, the following:

~~(1) Secure or nonsecure group residential child care.~~

(2) Foster family care.

~~(3) Maternity care.~~

~~(4) Part-day services, such as day treatment.~~

(5) Adoption services.

~~(6) Alternative programs or services.~~

#14-442

PROPOSED RULEMAKING

55 PA CODE CH. 5310
Community Residential Services for the Mentally Ill

§5310.3. Applicability.

(a) This chapter applies to providers of full-care or partial-care community residential rehabilitation services, or both, as defined in §5310.6 (relating to definitions).

(b) This chapter does not apply to child residential facilities which serve exclusively children governed by Chapter 3800 (relating to child residential and day treatment facilities), with the exception of host homes which are governed by this chapter.

*****

§ 5310.6. Definitions.

~~Group home for children--A single dwelling or apartment in the community, which is staffed by the provider and owned, held, leased or controlled by the provider or a provider-affiliate. Each group home cares for four to eight children.~~

*****

§ 5310.92. Applicability.

(a) This subchapter applies to all community residential rehabilitation services (CRRS) that provide full-care for children in host home settings.

*****

~~§ 5310.161. Group homes.~~

~~The requirements of §§ 5310.71-73 (relating to physical standards) apply to community residential rehabilitation service (CRRS) group homes for children. The following also applies:~~

~~(1) Space must be provided for the care of ill children who require separation from the group.~~

~~(2) All electrical equipment must be in good repair. Equipment such as washers and garbage disposals must have protective safety devices which prevent use when open. All electric power tools must be locked in a cabinet, closet or storage room when not in use and must be used only by staff. Electrical kitchen equipment may be operated by children only when under direct supervision of staff.~~

*****

55 PA CODE CH. 6400
Community Homes for Individuals with Mental Retardation

§6400.3. Applicability.

(f) This chapter does not apply to the following:

(8) Child residential facilities which serve exclusively children, regulated in accordance with Chapter 3800 (relating to child residential and day treatment regulations).

PLEASE P[illegible]URN TO:
INDEPENL[illegible].[illegible] REGULATORY REVIEW COMMISSION
14TH FLOOR, HARRISTOWN II

TRANSMITTAL SHEET FOR REGUI
REGULATORY REVIEW ACT

[illegible]
98 FEB -6 PM [illegible]
INDEPENDENT REGULATORY
REVIEW COMMISSION

I.D. NUMBER: 14-442

SUBJECT: Child Residential and Day Treatment Facilities

AGENCY: Department of Public Welfare

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. ____ With Revisions
b. ____ Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/6/98	Barbara J. Stakes	HOUSE COMMITTEE ON AGING & YOUTH
____	_____	
2/6/98	Kristi L. Kresser	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
____	_____	
2/6/98	Kim C Garner	INDEPENDENT REGULATORY REVIEW COMMISSION
____	_____	~~ATTORNEY GENERAL~~
2/6/98	C. Lee	LEGISLATIVE REFERENCE BUREAU

February 6, 1998

The Christian Home of Johnstown, Inc.

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March 12, 1998

Mr. Robert L. Gioffre
PA Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre.

I am writing this letter in response to the February 14, 1998 publication of the proposed 3800 regulations. As a member a the provider community, I am appreciate of the opportunity to address my agencies concerns in regards to these proposed changes.

In general, I am not in favor of the development of one set of regulations to govern programs that serve such a diverse number of youth. The current 3810 regulations have been serving the dependent and delinquent programs quite well for the past 13 years. The proposed changes to those regulations will increase my agencies costs by at least 10 per cent and will most likely not increase the quality of services by an appreciable level.

My comments on the specific regulations are based upon my experience of dealing with dependent and delinquent females functioning in a normal ability range.

3800.16 Unusual Incidents.

The inclusion of such things as outpatient treatment at a hospital, a child who leaves the premises for 30 minutes or more without permission.

Should programs be required to report all incidents of illness for which a child receives treatment, staff persons would spend an inordinate amount of time completing paperwork and residents would not be receiving the supervision that they require. Runaway situations are not unusual at most residential facilities. Currently, all agencies have in place a policy to notify the required parties regarding a child. Submitting reports to the department and investigating such incidents would do very little to alleviate the situations and would once again cause a loss of staff time in order to investigate and complete the forms.

I would like to see Unusual Incident reporting procedure maintained in it's original form from the 3810 regulations.

• ADMINISTRATION BUILDING • 1096 Edson Ave. • Johnstown, PA 15905 • 814-535-8775
• FEND HOME • Group Home/Emergency Shelter • 1100 Edson Ave. • Johnstown, PA 15905 • 814-535-1458
• HOUSTON HOUSE • Residential Independent Living Program • 1119-1121 Edson Ave. • Johnstown, PA 15905 • 814-536-1417
Fax 814-535-3454

3800.17 Incident Record

The requirement to maintain an incident report on medication errors, suicidal gestures, child who leaves the premises for more than 30 minutes without approval of staff, injuries, traumas and illnesses that do not require hospitalization

Once again, such a requirement would be very costly to the provider agency and would remove staff persons from supervising the residents. All such incidents are documented in a child's individual file and are reported to a placing agency representative.

3800.54 Child Care Supervisor

The Child Care Supervisor shall have one of the following.
A bachelor's degree from an accredited college or university and 1 year of work experience.

An Associates degree from an accredited college or university or 60 hours from an accredited college and 3 years experience with children.

This regulation does not consider the experience of many child care workers. This experience, many times, proves to be more valuable than a degree in an unrelated field. Additionally, there is no provision to grandfather a current Supervisor in to a position which he may currently hold.

3800.57 Staff Training

(b) Prior to working with children and within 60 days after the date of hire, each full time staff person who will have direct contact with children and the director, shall have at least 30hours of training to include...

This regulation will make it very difficult for small agencies to have staff available to cover shifts. Currently, all staff at our agency are involved in an orientation process that involves 16 to 24 hours of training on policy and procedure. Additionally, new staff are assigned to shadow a current staff member during their initial shifts.

3800.102 Child bedrooms

(h) Bunk beds shall allow enough space in between each bed and the ceiling to allow the child to sit up in bed.

The inclusion of this change would require most agencies to replace the vast majority of their bunk beds. Most beds have enough space for the majority of clients.

I believe that bunk beds that have enough space for the child to lay comfortably in their bed are sufficient.

3800.147 Tobacco prohibited

Use or possession of tobacco products by children and staff persons is prohibited in the facility, on the premises of the facility and during transportation provided by the facility.

I agree that children should not be permitted to use or possess tobacco products and that staff persons should not utilize tobacco in front of residents, however, my ability to control the possession of tobacco products by my staff is minimal. Additionally, I am concerned about staff leaving the grounds to smoke, thereby reducing the supervision of residents.

Agencies should be permitted to continue to monitor the use of tobacco by staff so long as that policy adheres to current 3810 regulations.

3800.188 Medications Administration Training

(a) . . . completed a Department approved medications administration course. . . .

3800.205 Staff Training

. . . . . shall have completed and passed a Department approved training program. . . . .

Provide specific information on the training that is acceptable to the department or return to just training. Without this specific information, the cost to the agency cannot be factored into operating expenses.

3800.202 Behavior Intervention Procedures

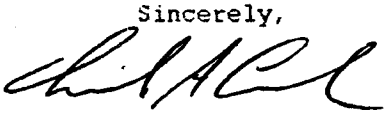
(b) A behavior intervention procedure . . . may be used only to prevent a child from injuring himself.

Currently, behavior intervention or Safe Physical Management is utilized when a child is a threat to himself, others or property. Staff must continue to be allowed to provide for the safety of other residents and property of the facility. This change would place all parties at risk by not allowing staff to deal with residents that are physically acting out.

The current policy as stated in the 3810's seems to be most appropriate and reasonable.

I thank you for the opportunity to express my concerns about these proposed changes.

Sincerely,



Trish A.Corle
Executive Director

Outside In School

of

EXPERIENTIAL EDUCATION, Inc.

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FACSIMILE TRANSMITTAL COVER SHEET

To: Mr. Robert Gioffre, DPW

Fax To: (717) 787-0414

From: Michael C. Henkel, Director
Outside In School, Inc.
PO Box 639, 303 Center Avenue
Greensburg, PA 15601 (724) 837-1518

Fax From: (724) 837-7680
Transmittal Date: March 16, 1998, ***SECOND CORRESPONDENCE***
Number of pages, including cover: 2

Dear Mr. Gioffre,

You may recognize our letterhead because we sent a similar fax earlier today. In fact, two copies of it may have arrived since we were having some difficulty getting through. ***This fax contains different material and should be considered in addition to the concerns expressed earlier.*** As I said, I am writing to express some concerns we have with the new 3800 regulations as published in the Pennsylvania Bulletin, Volume 28, Number 7, Part IV, on Saturday, 2/14/98. Outside In is a 24 bed residential facility for dependent/delinquent teenage boys in Westmoreland County. We utilize wilderness expeditions as a large part of our therapeutic intervention strategy.

Regarding 3800.143(e)(12), I am confused. Is that supposed to read "The physical examination shall include health education"? I'm sorry but I don't get it. Surely a more explanatory remark exists.

We fully support 3800.145.

Regarding 3800.151, please delete the clause "and every two years thereafter" from lines 6 and 7. The expense of these ongoing exams will surely fall on the employer and simply increase costs. Nothing substantial is gained over the provisions of 3810.21(e).

3800.161 is beautiful in it's simplicity. We fully support it and 3800.162(a). However, 3800.162(b) should not include snacks. It becomes problematic if we are having an apple or an orange for snack and we must provide multiple portions of each item so each student may have several apples or oranges.

Regarding 3800.187(a)(4) and 3800.188(a), we have never had a problem dispensing prescription medications and the Department approved training proposed will simply add to costs and increase the difficulty of adequate staffing. 3800.188(a) should read "a facility approved medications administration course".

Regarding 3800.201(b), it is essential to treatment with our population that we be able to apply behavior intervention procedures not only to prevent the child from injuring himself, but to also prevent him from injuring another person and/or to prevent him from destroying property. Please amend the phrase to read "...to prevent a child from injuring himself, another person or damaging property".

We fully support 3800.204 regarding unanticipated use.

Regarding 3800.303(a)(6), please amend the requirement by deleting the specific mention of the word "litter" lest it be construed that we must include commercially manufactured litters in our expedition gear. Ample training in wilderness medicine is available. Outdoor leaders should know how to construct a litter and other medical equipment necessary for emergency care in the backcountry.

Thank you for your consideration of these matters. I am,

Your servant,

Michael C. Henkel, Director

(25)

NEW DIRECTIONS
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Philadelphia, PA 19104
215-382-4344

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March 11, 1998

Robert L. Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Re: Objection to Proposed 3800 Regulation on Supervisors' Qualifications

Dear Mr. Gioffre:

Resources for Human Development, Inc. (RHD), a nonprofit corporation based in Philadelphia, operates a myriad of human-services programs for adults, children and families in southeastern Pennsylvania. RHD/New Directions is a community-based residential program for emotionally-disturbed adolescents. The youth we serve are referred to us by either the Philadelphia Department of Human Services or the Philadelphia Office of Mental Health.

Having sought to comply with the 5310, 3680 and 3810 regulations, we applaud your Department for the conciseness of the proposed 3800 regulations. However, we have grave concerns about the practical effect of the proposed regulation governing the minimum qualifications of child care supervisors. Specifically, the requirement in section 3800.54(d) that any supervisor have either "a bachelor's degree . . . and 1 year work experience with children" or "an associate's degree or 60 credit hours . . . and 3 years work experience with children."

Since its founding over five years ago, RHD/New Directions has met its staffing needs by drawing from the local population in the West Philadelphia neighborhood in which it is located. Indeed, today RHD/New Directions is one of the larger employers in this neighborhood. However, this has largely been a marriage of convenience. Given the fiscal constraints under which we operate, we are able to pay supervisors, on average, annual salaries of only $19,000. Although these

salaries are clearly insufficient in light of the child-care responsibilities which our supervisors bear, to talented people armed with only high-school diplomas, these salaries have been acceptable. But it has been RHD's experience that, to bachelor-level people, these salaries are not acceptable. Moreover, we worry that we will be unable to attract experienced staff with associate's degrees.

RHD's experience is based on its Children's Outreach Services program which provides "wrap-around" therapeutic staff support (TSS) to children similar to our own. That program has encountered great difficulty in recruiting bachelor-level candidates to meet the required minimum qualification for the TSS position.

In addition, we have found that promoting from within boosts staff morale by demonstrating avenues for upward mobility. It is in this way that we have been able to retain our most talented staff, which benefits the entire program. The proposed regulation would, at least in the short run (until we could persuade our talented staff to return to school, if that is possible), severely limit our ability to continue to promote from within.

We appreciate the Department's consideration of our concerns.

Very truly yours,

CHARLES F. WEYL, Psy.D.
Director
New Directions

c: Harriet Williams, Philadelphia Office of Mental Health
Rochelle Caplan, Philadelphia Department of Human Services
David Dan, Community Behavioral Health Corporation

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March 21, 1998

Department of Public Welfare
Robert L. Gioffre
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre:

I am writing to you to express my concern over the proposed 3800 Regulations. I am extremely upset that the need for culturally competent services is completely ignored as well as the right of parents to be partners in the service and treatment process. I believe this is a huge waste of my tax dollars if it is enacted as written. My son has received treatment as Learning Disabled + ADD and he needs better individualized attention!
People who are going to provide good services for children are going to do so regardless of any set of regulations. Those aren't the people I am concerned about. I am concerned about the people who want to make a huge profit because of the disabilities of some of our children. Those are the people who will benefit most from these regulations. With these regulations, almost anyone can set up shop and get a license.

Please give us more time to respond and give you input. Then, rewrite these regulations so that they insure that our children are getting good services.

Thank you for your consideration.

Shivaun A. Molloy
Parent

Telephone No: (610) 534-3118
County: Delaware

MIDDLE EARTH, INC.
299 JACKSONVILLE RD.
WARMINSTER PA 18974
TELE: (215) 443-0280
FAX: (215) 443-0245

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03/24/98

Mr. Robert L. Gioffre
PA Department of Public Welfare
PO Box 2675
Harrisburg PA 17105-2675

Dear Mr. Gioffre,

I am responding to the publication of the 3800 regulations in the Pennsylvania Bulletin, dated February 21, 1998. As I have had the opportunity to view these regulations in the earlier draft form, I am well aware of the efforts you have made to respond to input from the provider agencies. I am grateful for those efforts, and appreciate the work both you and Karen are doing. I feel that you are hampered somewhat by the extensive scope of the regulations. It is difficult to design one set of regulations that appreciates the vast and differing needs of juvenile programs and clients being served.

Middle Earth, Inc. has been operating an alternative education/day treatment facility since its inception in 1973. I have served as Vice President and Program director since that time, and I was one of the founders of the organization.

The program began on the grounds of Norristown State Hospital, when a number of us in the Psychology department were encouraged to address community service needs. This period included the changes in Juvenile Justice as sweeping as the removal of children from adult facilities, the closing of Camp Hill to juveniles, the removal of status offenses from the juvenile probation roles, and of course Act 148.

In conjunction with this, the Bucks County Juvenile Court Judges, Judge Garb and Judge Ludwig, along with the Chief Juvenile Probation Officer, William Ford, were looking for new alternatives in the disposition of juvenile offenders. Too often, the court would be faced with only two options in dealing with adjudicated delinquents: residential placement or outpatient counseling.

Often, the nature of the offense being considered for disposition was one which might allow for disposition other than residential placement except for the fact that many of the youngsters not only had committed criminal offenses but were in addition not succeeding in the public school system. Truancy, expulsion, and under achievement frequently went hand in hand with juvenile offenses. The court was therefore often forced to make a residential placement as it feared that the juvenile's chance for

rehabilitation was minimalizad by his poor attendance at school and the concurrent lack of adult guidance during his unstructured time.

This description of our target population led us to develop the first alternative education/day treatment program for adjudicated delinquents in Pennsylvania. As we assessed or prospective population, we made some assumptions and developed precepts regarding their behaviors and perceptions. For the most part this group was seen to be an anti authoritarian group of youngsters who had experienced little success in the public school system, and whose identity was more enhanced by their recalcitrance than their ability to succeed in the public educational system. In addition, by the time we could intervene with this population, they had adapted a sense of irresponsibility for their problems. They often commented on the absurdity or unfairness of expectations placed upon them by parents and school districts, and they rarely acknowledged their part in the problems and consequences that they faced. There also appeared to be a high need for excitement.

We began the program with a focus on junior high aged students with the anticipation that we would influence their behaviors and attitudes, improve their academic levels and return them to public school. We developed a behavioral modification token economy system where children earned points for academic performance, and appropriate behavior. These points were convertible to real goods such as food, snacks, tee shirts, class trips and most any other appropriate reward the children might desire. We evaluated the program by performing pre and post testing on academic achievement, recorded attendance rates, followed recidivism rates and measured changes in attitude. Our results over the 15 years we conducted testing showed that average attendance was 87%, academic performance increased by 250%, 1 year recidivism rates were 23%, 10 year recidivism rates were 34%, and there was a significant reduction in delinquent attitudes as measured on the Quay Personal Opinion Survey. In spite of our original hopes that we would be able to return youngsters to the public school system in their high school years, we soon discovered that it was necessary to continue the opportunity for alternative education and day treatment services throughout their high school years. Consequently, Middle Earth, Inc. expanded its service so that it was possible and even common for youngsters to complete their high school years in our program.

I have spent time presenting an overview of the development and results of the Middle Earth Inc day treatment program, as it is important that you understand that in our case as in many throughout the Commonwealth, programs have arisen out of a clearly defined need to respond to service demands of youth. Also, many programs are based on specific although different programmatic concepts.

In developing regulations for day treatment services, it is imperative that you recognize the variety of services being offered, and that you appreciate the need for diversity in program design and function. There is no one programmatic design that is right for all children at all times, therefore a broader array of options in day treatment will limit the requirement for residential services for a greater number of youth.

As to specifics:

3800.16 **Unusual incidents**

(a) The definition of unusual incidents is too broad; it includes any treatment for trauma. Often, we use the local hospital or emergency room for sprains, cuts or any ailment in which we require medical service. We tend to err on the side of caution, and the reporting requirements would possibly

limit our degree of response. Allow for some judgement on the part of the director to determine if an incident of injury was serious enough to warrant an unusual incident report. This is all so true for the 30 minutes clause.

Suggested wording... *a serious injury requiring inpatient treatment at a hospital...*

Delete the wording a "child who leaves the premises of the facility for 30 minutes or more without the approval of staff persons"

3800.17 **Incident record**

In day treatment programs, involvement in the program is most often voluntary, and students retain the right to leave. Often this event although not specifically approved by the program may be a sanctioned or an expected incident with little risk for harm or concern. The response is frequently to notify the parents of the absence. Furthermore, it is not an incident for a child to have a cold or sinus problem., certainly not one that requires a record. We would be recording "non incident" throughout the day under this regulation, and would not in anyway improve the service to youngsters.

Suggestion: Put a period after $500 and excluded what follows

3800.53-3800.55 **Staff qualifications**

There must be a grandfather clause for staff who have been in positions. We cannot fire qualified people with experience. Furthermore, there needs to be a greater emphasis on staff experience rather than education levels in promoting.

Suggestions: Include a grand father clause, and increase to value of experience as a substitute for education.

3800.125 **Flammable and combustible materials**

I am not fully aware of what items qualify as flammable materials, but I suspect the wording is too broad. As part of vo-tech training, photography class, and even art classes, children come into contact with flammable materials.

Suggestion: strike "and inaccessible to children"

3800.143 **Child physical examination**

Day treatment programs often work with children who are referred by the public school system, and are no more deeply involved in the child welfare system than that. It is unrealistic, extremely expensive and intrusive to expect students and families to be required to obtain a more extensive physical examination than that required for public school. All school students in Pennsylvania are required to have proof of immunization and those records follow the student to the alternative school. A full medical examination would place a high cost on day treatment centers that often are involved with youngsters for only a short part of the day. This regulation would increase overall cost for day treatment services well beyond any savings experienced by the 3800's

Suggestion: exempt day treatment from 3800.143

3800.145 As written, it would be a violation for staff to have cigarettes in their personal cars if the cars are parked on the premises.

Suggested wording: Use or possession of tobacco products by children, and use by staff persons is prohibited in the facility, on the premises...

3800.163. **Food groups.** Since many day treatment programs serve only lunch. and this might be sandwiches or pizza, it is excessive to require all food groups be represented at a luncheon meal. Many day treatment programs do not have full kitchen facilities and could not easily provide a 5 food group meal.

Suggestion: exempt day treatment from 3800.163

3800.164 **Withholding or forcing of food prohibited.**

(a) I believe that there is a lack of understanding of the mission of day treatment programs. Often we are asked to take youngsters whose behavior or performance elsewhere has led to their referral to our programs. There is an implicit if not stated expectation that we will be modifying behaviors. There is also an assumption that the youngsters we service have not willingly changed those behaviors in the past. Programs use an array of techniques to attempt to influence change in youngsters. Behavior programs or token economy programs will use food and snacks as an inducement to encourage behavioral change. This does not mean that students will be starved, but it might mean that a misbehaving student would not enjoy as bountiful a meal as one who is performing adequately. Desserts and snacks are used most everywhere as inducements to change behaviors, from as simple as "eat your dinner or you can't have dessert" to "We won't be going out for ice cream since you've been misbehaving'. Without some simple tools that equate performance to opportunity or reward, programs will be forced to more often make continuation in the program the only consequence for inappropriate behavior. As a result, more youngsters will be removed from programs as the tools to change behavior are removed. Please understand this is not a Dickens like environment we operate in. In all day treatment programs, kids will stop attending if they feel they are mistreated. I have always believed that our mission in working with students was to empower them to make rational decisions based on an understanding of the consequences of their actions. We will not empower them if we do not use techniques that clearly indicate the relationship to choices and consequence.

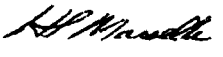
(b)

Suggested wording: A facility may not withhold food or drink as punishment.

3800.311 **Exceptions for day treatment**

(8) I suspect this is a misprint, as a-e,g,h,j are exempted. I think it should be all of 3800.103 is exempt for day treatment.

Sincerely yours,



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staff higher status, not reducing their collective status by lowering standards. *The modest educational requirements of the 3810 regulations should be maintained.*

2. 3800.202/203 Again, unlike many other types of clients, Children and Youth and Juvenile Probation clients often display a very wide variety of challenging behaviors. This section will require the production of many behavior intervention procedure plans for most clients. In some cases dozens of these plans will be needed. Is this really how DPW wants staff to spend their time? Each plan will take an hour or more to produce, then parents (if available or willing) must approve of it, the client must review it, the placing agency must approve it, everyone must sign it, etc. This will prove to be a very cumbersome task that takes everyone's time away from working with kids. *We suggest that an agency's typical interventions for various behaviors be added to the Individual Service Plan.* The ISP is already in place and could easily and inexpensively be modified to include this information. All of the concerned parties previously listed have the opportunity to review and sign ISPs currently. Strengthening this existing useful document would be an effective solution to this problem.

3800.211 We applaud the department's efforts to refine this section of the regulations

March 25, 1998

Robert Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, Pa. 17105-2675

Mr. Gioffre,

The Youth Counselors of Mechanicsburg Home for Children and Family SERVICES respectfully submit our concerns regarding the 3800 regulations that are currently being considered by the Department of Public Welfare. Our organization represents the thousands of individuals who work with Pennsylvania's troubled youth in a direct care capacity. We feel that there are several aspects of these proposed regulations that are not conducive to safe and quality care for youth in Pennsylvania's residential placements.

Our first concern is that there appears to be no need to combine each of the populations that 3800 would cover into the same regulatory category. Different populations have vastly different sets of needs and present vastly different challenges to those responsible for their care. Combining the regulations and program expectations of the various categories waters down the requirements

for some while effectively tying the hands of the staff who work with others. *We recommend that the 3800 regulations not apply to residential facilities for Juvenile Probation and Children and Youth clients and the 3810 regulations now in place be maintained.*

Some of the specific areas of concern for us are as follows:

1. 3800.16 Unlike many other populations, Children and Youth and Juvenile Probation clients present many challenging and difficult behaviors. Many of these clients are in placement due to the very same behaviors that this section refers to as *unusual incidents*. Frankly, for most of the clients in this category the behaviors described are all too usual. Many of the agencies that have discussed the proposed regulations with us have projected anywhere from a 500% to 2000% increase in the number of unusual incident reports that will need to be filed each year. This is a very costly regulation in both actual dollars and staff time. We recommend that the current unusual incident report requirements from 3810 be maintained.
2. 3800.55 We see no reason to lower the educational requirements for staff who work with some of Pennsylvania's most disturbed and challenging clients. 3800 places several new and sometimes difficult tasks on the staff who work directly with these clients. How can we lower the educational requirements at the same time? These requirements are not very high in the existing 3810 regulations. We are not aware of any agencies who have significant difficulty meeting the existing requirements. Also, education should be something that the department and the State support. Having programs provide the bulk of its programming to impressionable children using people with high school diplomas or GEDs will send the wrong message. In addition, in the introduction to 3800 it is inferred that this change will somehow save agencies a great deal of money. The department must know that most direct care staff in Pennsylvania are greatly underpaid. In many cases a person can make as much or more money working in a fast food restaurant as they can working with children! How will agencies save money under these circumstances? Most of these people are hard working and dedicated professionals who have devoted their lives to helping troubled children. We should all be working together to give direct care. Child safety is also a major concern for those who work with children. However, this section does require staff to change positions every 10 minutes during a restraint. We feel that this expectation could unnecessarily create dangerous situations for both staff and clients. Many young people in Pennsylvania's institutions are very large in stature. In addition, many of the staffs who work direct care are not large and powerful people. If you have ever had the experience of having to try to physically maintain a 17 year male who wants to beat up his roommate, you know what I mean. Couple this with the likelihood that there are up to seven other residents in the unit at the time and that you are working

alone with these eight young people. This type of situation is very common, and often very frightening for staff. To now ask this same staff person the change positions when they will have enough trouble just managing this client, is in no one's best interest. However, changing positions could be used when working with younger children and in situations where additional staff are available to assist in the intervention. We strongly suggest that the this section (d) read, *when possible and in situations where injury to the client or staff will not be increased, the position of the manual restraint or the staff person applying the restraint, should be changed at about 10-minute intervals.*

There are other areas of concern. We look forward to the possibility of public hearings on these regulations to air all of our concerns.

Please feel free to contact me with any questions or concerns that you may have regarding this letter. We work together on behalf of Pennsylvania's youth in care.

Sincerely,

David S. Nelson
Day Coordinator
U.M.H.C.

(12)

Division of Program Planning and Development

MAR 2 0 1998

Received:
Refer to: _____

REVIEW COMMISSION

COMMISSIONERS' OFFICE

County Commissioners
Richard R. Stevenson, Chairman
Cloyd E. Brenneman
Olivia M. Lazor

County of Mercer
103 Courthouse
Mercer, PA 16137

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Phone
(724) 662-3800
(724) 962-5711

March 16, 1998

Mr. Robert L. Gioffre
Pennsylvania Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105

Dear Mr. Gioffre:

Attached please find a copy of the letter which was sent to us from Mr. Richard Losasso of George Junior Republic. As you can see, they are concerned about the proposed regulations by the Department of Welfare.

The purpose of this letter is to make you aware that we share his concerns and join him in urging the department to change the language in the regulations accordingly. We are sure that it is not the intent of the department to support regulations which would needlessly increase costs. As we are sure you know, containing costs in these areas of the county budget is of concern to us. While placements are necessary, efforts to be cost effective are crucial.

Thank you for your consideration in this matter.

Sincerely,

Mercer County Board of Commissioners

Richard R. Stevenson, Chairman

Cloyd E. Brenneman

Olivia M. Lazor

MCC/RRS/mr
Attachments

Dauphin County

MENTAL HEALTH-MENTAL RETARDATION PROGRAM

COMMISSIONERS
SALLY S. KLEIN
RUSSELL L. SHEAFFER
ANTHONY M. PETRUCCI

COUNTY ADMINISTRATOR/
CHIEF CLERK
THOMAS E. WASHIC

ADMINISTRATOR
STANLEY J. MROZOWSKI

HUMAN SERVICES DIRECTOR
RALPH A. MOYER, JR.

PHONE (717) 255-2888
FAX (717) 255-2960

HUMAN SERVICES BUILDING * 25 SOUTH FRONT STREET * HARRISBURG, PENNSYLVANIA * 17101-2025

March 13, 1998

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Robert L. Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675
FAX: 717/787-0414

Dear Mr. Gioffre:

Please accept my comments on the proposed Child Residential and Day Facilities as published in the Pennsylvania Bulletin, Volume 28 Number 7 dated February 14, 1998. Under General Requirements, Section 3800.16. Unusual Incidents (d) the following is a recommended change:

> " The facility shall complete a written unusual incident report on a form prescribed by the Department and send it to the appropriate regional office of children, youth and families, the funding agency, and as appropriate, the county MH/MR program, within 24 hours."

This is justified because the County MH/MR Program, although not a custodial entity and not always a funding source, recommends the placement of children and youth voluntarily by parents/guardians in residential and day programs without OCYF involvement. Access to information regarding unusual incidents is valuable outcome information concerning the performance of a service provider and the status of the consumer. The appropriateness of this information would be based upon the registration of the consumer in the County MH/MR Program and documented by a Base Service Unit registration number.

I hope this information is useful in the review process. Please feel free to contact me at 717/255-2888.

Sincerely,

Rose M. Schultz, Director
Child and Adolescent Mental Health Services

Mathom House
of Middle Earth, Inc.

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March13, 1998

Robert L. Gioffre
PA Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre,

I wish to address the proposed 3800.00 regulations which place certain restrictions on treatment procedures supplied for youngsters in outpatient and residential care. I am especially concerned about the blanket prohibition of aversives, which appear to be regarded more as capricious punishment than an integral part of a treatment regimen. I write from the perspective of a psychologist and clinical director of Middle Earth Inc/Mathom House, which provides a range of treatment services for juvenile sex offenders. All of these youngsters have been adjudicated delinquent and many are regarded as a significant threat to the community. Those who are considered most dangerous are placed in residential treatment in a secure setting. However, it is important to remember that all of these youngsters will eventually be released to return to the community, whether treated effectively or not.

Juvenile sex offenders present a variety of psychological features which contribute to the etiology of their offense. For many, deviant arousal is a significant factor, and for some it is the primary factor. Individual, group, and family therapy directed toward insight, emotions, cognitive distortions, empathy training and relapse prevention in combination with specialized treatment modules directed toward socialization, anger management and other issues are all important procedures which comprise the standard or core treatment curriculum for sex offenders. However, these standard procedures do not effectively address deviant arousal. That is more likely to be accomplished by certain behavior therapy procedures combined with physiological measures. In particular, satiation, sensitization, and aversives are utilized at Mathom House as the crucial component of treatment to reduce deviant arousal patterns. The aversives have included a variety of olfactory stimuli; electric stimulation has not been utilized here but might also be effective if closely regulated. Although these stimuli are certainly noxious or unpleasant, they are not harmful. It could be forcefully argued, in accordance Waiver Section 333.20 for example, that the benefit of this treatment far outweighs any risk to the health, safety, and well being of the youngsters.

1740 Easton Road • Doylestown, PA 18901 • (215) 343-7720 • Fax (215) 343-2783

Seclusion is another technique which has special merit when applied within the context of a treatment plan for juvenile sex offenders as a consequence for boundary violations. Such violations, of course, are particularly relevant because they define the nature of the offense, the sexual assault, for this population.

I am not certain of the status of pharmacological intervention with respect to the impact of the proposed regulations. The Serotonergic reuptake inhibitors and antiandrogenics are promising and ought not be summarily prohibited as a treatment service. Furthermore, polygraph and phallometric measures provide vital information which allows clinicians to formulate individualized treatment procedures. They too need to be included within the overall treatment plan.

I believe that we have successfully managed the difficulties associated with the competing issues of effective treatment vs protection of the welfare of youngsters at Mathom House. About 10 years ago, in coordination with the Ethics Committee of the Pennsylvania Psychological Association, we developed a series of consent forms which clarify the various treatment procedures and which request the cooperation of the youngster for each. Individual, group, and family therapy are regarded as standard treatment procedures which the youngster and/or his guardian must agree to in order to be accepted into the program. The more intrusive procedures which include some behavior therapy procedures, aversives, and medications are regarded as extraordinary. Youngsters are asked to consent to these on an as needed basis. The process is one of full and informed consent, and the youngster or his guardian has the right to decline or stop the procedure at any time without prejudice – he will not be excluded from the treatment program. I propose that a similar arrangement be incorporated into the 3800 regulations, perhaps through appropriate additions to the Waivers and/or Behavior Intervention Procedures sections. Presumably programs utilizing extraordinary procedures could be granted a general permission to do so, subject to the scrutiny of the Department of Public Welfare, and specific procedures could then be included in each youngster's Individual Service Plan. It is important to note that the consent of the youngster is crucial not only as an ethical matter but from a treatment efficacy view point as well: the behavior therapy and aversive procedures are not likely to be productive unless the client is agreeable and is highly motivated to participate in these treatments.

Finally, it ought to be emphasized that the judicious and effective use of behavior therapy, aversive, and pharmacological procedures is fully consistent with the Juvenile Act, in fact might even be required by that act, in order to provide appropriate rehabilitative treatment and protect society. Failure to provide these services might doom a youngster to a future of deviant sexual arousal, assaults, imprisonment, and incalculable harm to the community.

F.H. Sch

Frank Schmauk, Ph.D.
Executive Director
Middle Earth Inc

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3/3/98

Dept. of Public Welfare
Robert L. Gioffre
P.O. Box 2675
Harrisburg, Pa. 17105-2675

Dear Mr. Gioffre,

I am writing to you to express my concern about the proposed 3800 regulations. I am a family member or significant adult of several children who have needed, and will need in the future, services to address disabilities. I am also writing to you as an active member of the African American Community here in the Pocono's.

It would be difficult to enumerate all of the problems I see with these regulations in the context of this letter. Suffice it to say, there are many serious problems. One of the most serious is the complete lack of acknowledgment of the right of parents and family members to be treated as partners. The total absence of the need for services to be designed and implemented in a way that is culturally competent is another area of grave concern. Failure to differentiate the individual populations that this will cover and their very different needs is untenable.

This is a large and difficult document to read and understand. I don't believe that the people who will be most affected by this have had adequate time to review this and comment on it. I would ask that you extend the period of time for comment to insure that you are getting a true measurement of the people's reaction. at the very least, I would ask that you rewrite this document to incorporate the areas i mentioned previously in a more realistic fashion.

Thank-you for your consideration.

Sincerely,

Emily McIlwaine
Parent and Parent Advocate

#1927
DPW 5/4/98

LICENSING REGULATION WORK PLAN

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Regulation Chapter: 55 Pa Code Chapter 3800

Title: Child Residential and Day Treatment Facilities

Work Plan Preparation Date: January 16, 1998 **Date Plan Revised:** May 1, 1998

Primary Persons Responsible: Robert Gioffre, Karen Kroh

Legal Authority: Articles IX and X of Public Welfare Code

Final Target Date: May 2, 1999

ACTION STEP	PERSON RESPONSIBLE	TARGET DATE	DATE COMPLETED
Need for regulation identified by: • Legislature • Courts • Governor's Office • Program or Policy Office staff • Attorney General • Inspector General • Other state agency • General Public, consumers, advocates, counties • Professionals/experts in field • Providers	JoAnn Lawer		November 1996
Research and verify legal authority	Karen Kroh		December 18, 1996
Prepare detailed work plan for entire regulatory development and promulgation process	Bob Gioffre Karen Kroh	January 24, 1997	January 24, 1997
Review work plan with Policy Office/ Licensing Project	Bob Gioffre	January 29, 1997	January 29, 1997

ACTION STEP	PERSON RESPONSIBLE	TARGET DATE	DATE COMPLETED
Conduct research: • other state's/Canadian regulations • national standards (e.g. federal funding, accreditation etc.) • consumer and provider needs/impact surveys • PA human service licensing regulations • literature review • PA interpretive rules	Bob Gioffre Karen Kroh	January 31, 1997	February 2, 1997
Meet with field licensing professionals to request comment based on experience with application of current regs.	Bob Gioffre Karen Kroh	January 31, 1997	January 21, 1997
Meet with appropriate headquarters staff, including Policy Office/Licensing Project, other state agencies if appropriate, other program offices, etc. to request comment	Bob Gioffre Karen Kroh	January 31, 1997	January 27, 1997 (MH/MR/ BSCYP)
Meet with OCYF work group including regional directors and BSCYP	Bob Gioffre Karen Kroh	January 1997	January 1997 and through spring
Meet with key external stakeholders	Bob Gioffre Karen Kroh Anne Shenberger	March 1, 1997	March 20, 1997
Prepare preliminary draft based on research and input received; draft submitted to field and headquarters program staff for review and comment	Karen Kroh	March 1, 1997	March 3, 1997

ACTION STEP	PERSON RESPONSIBLE	TARGET DATE	DATE COMPLETED
Form work group, including external consumer, provider and advocacy groups (size of work group should be about 45 individuals); group should include: a) consumers or families of consumers, b)provider representation to include balance of provider service types, size of agency, variety of staffing levels, profit/nonprofit, provider association members v. nonmembers, and geographic location; c)statewide provider, consumer, and advocacy organizations; d) health and safety professionals; e) experts in related fields f) county agencies as appropriate g) field licensing staff ; h) headquarters program/policy staff; and I) other program office and state agency staff as appropriate	Bob Gioffre Karen Kroh Anne Shenberger Charles Chervanik	March 1, 1997	April 15, 1997
Revise regulations based on comments. Submit draft for review and comment within Program Office and to Policy Office/ Licensing Project	Bob Gioffre Karen Kroh	March 31, 1997 (comments due 4/15)	April 7, 1997
Review and analyze comments; prepare revised draft of proposed regulations	Bob Gioffre Karen Kroh OCYF Work Group	April 20, 1997	April 21, 1997
Send draft regulations to work group members for participation at work group meeting; send to other professionals such as medical, environmental protection, fire safety, etc. for written review and comment	Bob Gioffre	April 21, 1997	April 21, 1997

ACTION STEP	PERSON RESPONSIBLE	TARGET DATE	DATE COMPLETED
Meet with work group to review and discuss draft proposed regulations - 3 consecutive day meeting--request written comment in 3 weeks	Bob Gioffre Karen Kroh Anne Shenberger	May 9, 1997	May 12-14, 1997 Comments due 5/21
Revise regulations after workgroup meeting and written comments	Bob Gioffre Karen Kroh	May 30, 1997	June 2, 1997
Send revised draft to external work group, OCYF work group, and field licensing staff for written review and comment	Bob Gioffre	June 10, 1997	June 14, 1997 Comments due 6/30
Review comments and revise regs	Bob Gioffre Karen Kroh	July 15, 1997	July 15, 1997
Prepare proposed regulation package: • NORD • Regulatory Analysis Form • Face Sheet and Preamble • Regulation Route Slip • Letters to House and Senate • Background information	Bob Gioffre	July 15, 1997	August 8, 1997
Review final draft with work group	Bob Gioffre Karen Kroh Anne Shenberger	July 30, 1997	July 29, 1997
Regs packet reviewed and approved by OCYF Deputy, Bureau Directors, Division Chief	Charles Chervanik Lee Miller JoAnn Lawer	August 1, 1997	September 5, 1997
Regulations packet approved by Policy Office/Licensing Project (send for concurrent reviews with appropriate Program Offices, Budget Office, OLC)	Karen Kroh	August 10, 1997	October 27, 1997 (held for all other office approvals)
Regulations packet approved by other appropriate Program Offices	Charles Curie Nancy Thaler	August 10, 1997	NT-9/30/97 CC-9/22/97

ACTION STEP	PERSON RESPONSIBLE	TARGET DATE	DATE COMPLETED
Regulations packet approved by Budget Office	Steve Roskopf	August 20, 1997	October 2, 1997
Regulations packet approved by Office of Legal Counsel	Howard Ulan (also Doris Leisch-Scott issues)	August 20, 1997	October 7, 1997
Regulations packet approved by Regulation Review Unit in OLC	Tom Vracarich	August 23, 1997 (rec'd 10/30)	Nov 3, 1997
Regulations packet approved by Secretary	Secretary Houstoun	August 30, 1997	November 5, 1997
Briefing with Governor's Office	Terry Moloney Karen Kroh	August 15, 1997	GPO-11/6 OGC-11/20
Regulations packet approved by Governor's Office • Policy Office • General Counsel • Budget Office	Terry Moloney	September 30, 1997 (sent 11/7)	GBO-11/7 GPO-11/26 OGC-12/30
Regulations packet approved by Attorney General.	OGC	October 30, 1997 (sent 1/9)	Tolling memo rec'd-1/23 Approved-February 2, 1998
Publication as proposed in PA Bulletin.	LRB	November 10, 1997	February 14, 1998
Program Office distributes to providers, state associations, and interested persons (intent for wide distribution)	Bob Gioffre	November 13, 1997	February 13, 1998
Briefings with House, Senate, IRRC	OPD OCYF OLA OGC	March 30, 1998 (IRRC declined)	March 13, 1998 House/Senate staff

ACTION STEP	PERSON RESPONSIBLE	TARGET DATE	DATE COMPLETED
Meetings with External Stakeholder Groups	Bob Gioffre Karen Kroh	March 15, 1998	PAR-3/5/98 PCCS,CYFC, PCPA-3/3/98 PCCS-3/5/98 PP&A-3/12/98
Extend comment period by 30 days	Secretary Houstoun Karen Kroh	March 18, 1998	March 17, 1998
Convene internal Regs Team and establish routine monthly meetings	Peg Dierkers Karen Kroh	April 1, 1998	March 16, 1998 and ongoing
60 day comment period ends		April 15, 1998	April 15, 1998
Receive comments by House and Senate 20 days from close of comment period		May 5, 1998	April 14, 1998 (House Aging and Youth Committee) (Mtg with legislative staff-3/13/98)
Enter each public comment into computer program; prepare summary of comments	Bob Gioffre	May 1, 1998	Draft-April 27, 1998
Receive comments from IRRC 30 days from close of comment period		May 15, 1998	(Mtg with IRRC-5/4/98) May ,1998
Ongoing meetings with External Stakeholders and Work Group on specific issues	Bob Gioffre Karen Kroh Anne Shenberger	July 1, 1998	PCCS,PAR, CYFC,PCPA- wk. of 3/2/98 PP&A-3/12/98 PIN,JLC,PPA, PA Ptnrships- 5/12/98
Prepare draft of final regulations	Karen Kroh Bob Gioffre	July 15, 1998	

ACTION STEP	PERSON RESPONSIBLE	TARGET DATE	DATE COMPLETED
Prepare final regulations packet • Regulatory Analysis Form • Face Sheet and Preamble • Regulation Route Slip • Summary of Comments • Background information	Karen Kroh Bob Gioffre	August 15, 1998	
Regulations packet reviewed and approved by OCYF Division Chief, Bureau Directors, and Deputy Secretary	Wayne Stevenson Lee Miller Charles Chervanik JoAnn Lawer	August 25, 1998	
Regulations packet approved by OMR and OMHSAS (send for concurrent review with Budget and OLC)	Charles Curie Nancy Thaler	September 4, 1998	
Regulations packet approved by Budget Office	Steve Rosskopf	September 11, 1998	
Regulations packet approved by Office of Legal Counsel	Howard Ulan	September 11, 1998	
Regulations packet approved by Policy Office/Licensing Project (can be sent for concurrent reviews with appropriate Program Offices, Budget Office, OLC)	Peg Dierkers	September 15, 1998	
Regulations packet approved by Regulation Review Unit in OLC	Tom Vracarich	September 16, 1998	
Regulations packet approved by Secretary	Secretary Houstoun	September 22, 1998	
Regulations packet approved by Governor's Office • Policy Office • General Counsel • Budget Office	Terry Moloney Karen Kroh OLC JoAnn Lawer	October 22, 1998	
Briefings with House, Senate, IRRC	OLA Terry Moloney Karen Kroh JoAnn Lawer	November 10, 1998	

ACTION STEP	PERSON RESPONSIBLE	TARGET DATE	DATE COMPLETED
Approval by House, Senate, IRRC	OLA Terry Moloney Karen Kroh JoAnn Lawer	November 22, 1998	
Approval by Attorney General	OGC	December 22, 1998	
Publication as final in PA Bulletin.	LRB	January 2, 1999	
Develop implementation policies, procedures, interpretive rules, and inspection instruments; submit to external stakeholders for review and comment	Bob Gioffre Karen Kroh Regional OCYF Directors OMHSAS OMR	February 15, 1999	
Train field licensing staff	Bob Gioffre Karen Kroh	March 1, 1999	
Field licensing staff train providers, counties, consumers, etc. on new regs.	Regional Office Staff	March 30, 1999	
Effective date of new regulations (120 days after publication)		May 2, 1999	

Mathom House
of Middle Earth, Inc.

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March13, 1998

Robert L. Gioffre
PA Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre,

Enclosed you will find responses to several of the proposed 3800.00 regulations, which are additional to those responded to by Dr Frank Schmauk.

I am writing as the Facility Director of Mathom House, which is the residential sex offender treatment program. As Dr. Schmauk indicated, while these adjudicated offenders are considered dangerous to the community and thus removed - they will return following completion of their treatment regime. It is our belief that in addition to sex offender specific therapy that they also benefit from learning and practicing social skills, and independence skills. Such age-appropriate skill mastery contributes to positive self-esteem, and a sense of empowerment, which subsequently replaces former maladaptive, and/or destructive social behaviors. Skill training is only effective when practiced in the community; otherwise learned dependency from extensive institutional living becomes the norm which effectively sabotages successful return home. Therefore, I have addressed several areas of the proposed regulations, which would force us to disallow our residents to be in the community due to mandated staffing requirements.

Other policies to which I have responded are largely administrative issues, which will increase costs and/or create time-line impossibilities.

Sue Pidcoe

Sue Pidcoe, OTR/L
Facility Director
Mathom House of Middle Earth Inc

1740 Easton Road • Doylestown, PA 18901 • (215) 343-7720 • Fax (215) 343-2783

Staff Hiring 3800-52

Policy has increased the entry level requirements for supervisors to either a Bachelors degree plus one year of work experience with children or an Associates degree (60 credit hours) plus 3 years experience with children

Current regulations allow 50% of the supervisory staff to have either 4 years of college or four years experience working with children or a combination of college and work experience equal to four years. The other 50% of supervisory staff may have a minimum of two years working with children.

Our experience has demonstrated that college degrees do not typically prepare graduates for "child care" or supervisory responsibilities—especially with our population of juvenile sex offenders. It is our opinion that our supervisors have obtained their appointment due to effective on the job training, aptitude, and demonstrated leadership qualities. The current regulations have served us well in allowing the administration to wisely select from a larger pool of experientially qualified candidates, than would be available if bachelors or associates degree restrictions were to be effected. Many of our selected supervisors have extensive backgrounds in leadership roles including previous work history and volunteerism. Selection by degree bias would have often times dictated that a younger, less experienced employee be granted supervisory responsibilities over others more suitable for this position in terms of established skills. It is our preference to have a capable, experienced person at the helm regardless of formal education; therefore the standing 50% guideline for degreed: non degreed supervisors would best serve the intention to insure that supervising staff are quality, and that the children are well cared for.

Staff Training 3800.57

Recommendations are to dramatically increase formal training hours and front-load them to be accomplished within approximately two months time.
Currently the regulations require a total of twenty hours of formal training per year; with part-time staff requirements being pro-rated.

While front loading the training is a creditable idea, pragmatically for smaller agencies (19 line staff) this is a burdensome mandate especially when factoring in staff turnover and recognizing that often 2-3 out of 6 scheduled line staff are new. Thus during any shift 30-50% of staff are missing while involved in training.

New line staff are expected to schedule CPR and First Aid, through local agencies such as American Red Cross. Unfortunately their classes are frequently cancelled at the last minute: 3-4 cancellations are not unusual which then delays certification by as long as 6 months—not for lack of trying.

The alternative to utilizing the above is to do lengthy training in-house, which is cost prohibitive given that those in training be paid at time and ½ while those doing OT to cover the shifts are also getting time and ½. If attempting to meet the rigorous 60 day

time-line, we would theoretically have to reproduce each training - CPR, First Aid/Hemlich, Fire Safety, and Crisis Intervention every 2 months - virtually expanding our training costs by 4 times, plus expansion of the overtime budget beyond reason.

It is obviously in the best interest of any agency to train new employees ASAP. However training schedules must be balanced with safe floor coverage, and given that affordable certification is often at the convenience of external specialists – the likelihood of consistently completing 30 hrs of training within 60 days would be unreasonable.

Child Health 3800.141

Although no changes have been proposed, we would like to address current concerns.

1. The health and safety assessment areas can be addressed via
   a. Information in the child's referral packet.
   b. Information provided via parents or guardians.

Therefore, it seems that a case-manager would do an acceptable job without the credentials of having been "medically trained".

2. Since our residents are typically placed from detention centers to us, and since we require a recent physical as part of our admission requirements, can not this count as part of the initial 24 assessment, since it most certainly was done by their house physician?

Quality of Food 3800.162

Proposed regulations state that additional portions of food (snacks and meals) shall be available. Our question is – to what end? Our population of teenage boys could down two large pizzas per sitting and still want more. Despite poor self-esteem and contributing weight problems our boys will often prefer to trash their meals and eat desserts. Given that we are determined to create a milieu of a healthy family, it seems relevant to instill healthy eating habits as well; this can be done via a structure that protects against gluttony, starvation, and/or restrictive preferencing such as just desserts. It seems that as long as our facility meets standard nutritional requirements relevant to adolescent boys, that in-house limits would be an acceptable approach as well as non-detrimental to each child's health.

Tobacco Prohibition 3800.145

Proposed regulations restricting children from tobacco use seems reasonable. Regulating staff from taking a smoke break outside and out of sight from residents seems extreme. A smoker undergoing daily 8 hour withdrawal as a result of this mandate will not be the most successful at side stepping emotional landmines commonplace among a population of dysfunctional teenage boys, as a matter of fact an irritable response could result in an escalation worthy of incident reports.

Withholding Food 3800.164

Proposed regulations decree that food or drink may not be withheld, including snack or dessert as punishment. It is reasonable in our opinion to withhold dessert as a logical consequence. For example if a youth is asked to leave the table for inappropriate (a social/ antisocial) behavior he may finish his meal in his room, since dessert is passed out at the end of the meal, it is logical that he ought to miss it. If the dessert is hand delivered to his room it will be viewed as a perk, and therefore negates the intended learning.

Administration of Medication 3800.187

Proposed regulations state that all medications must be administered by a qualified person – the least qualified person being a staff member holding a current certificate in medications administration. Current regulations have indicated that non-medical staff may assist a child in taking medications from the original prescription container. We have gone a step further and have our prescriptions packaged from the pharmacy in "bubble" packs, which minimizes dispensing errors. Medication Administration courses are typically eight hours; in order ensure that a certified staff is on duty despite vacations, sick days, off ground field trips, etc it would be necessary to train all staff including supervisors. Such training is

1. Difficult to impossible to secure
2. Costly – eight hours of training for 20 staff requires overtime for those attending the course plus overtime for those covering extra shifts.
3. Redundantly costly due to inevitable turnover of staff.

If these classes were provided repetitively by an external agency, at reasonable per diem, it would lesson the burden of cost and coverage issues given that 1 or 2 employees might attend at a time.

Child Care worker 3800.55

Proposed regulations state that a child will be directly supervised at all times. Our program provides a continuum of care in keeping with the balanced approach mandate. Our residents are gradually given greater levels of non-supervised time, initially on the front stoop, to on-the-grounds, and eventually into the community with a buddy and/or to work individually. Developmentally teenagers require opportunities of unsupervised time in order to mature and to practice the skills they are learning both in therapy and in skill acquisition.

Childcare Supervisor 3800.54

If the requirement of supervisory ratios being one supervisor on site for 24 kids or more includes overnights, then we have concerns. We are a 24-bed program composed of 2 12-bed wings. We schedule one awake line staff position per each wing for overnights. Requiring one of our three program supervisors to cover an overnight shift would seem nonproductive and costly. Supervisors are of great value during day and evening shifts to ensure the program integrity and that the children are well cared for

Overnight staff basically check on the kids regularly and carry out routine chores. Supervisory personnel and therapists are on-call at all times, and also do unannounced overnight checks.

Physical site 3800

The regulations call for extreme environmental precautions resulting in a sterile, institutional surround. Protective coverings on glass panes, non-glass mirrors, normal household accessories such as drapery cords, electrical outlets, and shoestrings are forbidden. This is a horrible environment for long term residential kids who are being prepared for community re-entry. Certainly a designated "safe" area for kids in temporary distress is in order, however our program, while working with sex offenders needs to initially protect the community, in security measures it also needs to simulate a normal, healthy, familial atmosphere which encourages self sufficiency and skill mastery. Such positive-empowerment treatment goals are nullified if the physical environment fosters dependency, and chilling reproductions of asylums.

Safe Transportation 3800.171

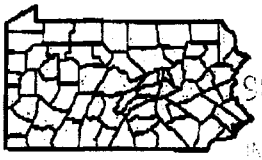
Regulations require 1 driver plus one staff for 1:3 children. This mandate is cost prohibitive and disruptive to therapy. A 24-bed program does not have the financial capacity to staff so exorbitantly as to provide 1 driver and 1 staff for three children. The staffing ratio would also negate our practice of utilizing community resources in a normalizing fashion- such as accompanying a youth to the physician or dentists office 1:1m, or rewarding a youth with lunch for successful goal achievement. We provide a continuum of treatment towards returning back home. Community access is critical to the normalization process for our teenage population. It is counter-therapeutic to not provide these opportunities to the boys. We have learned that one staff with one or two boys on a community outing has often become a spontaneous therapy session due to the quality time and bonding impetus of such excursions. This will not be available if staff is disallowed to embark without an extra adult present.

Child Physical Exam 3800.143

Regulations state that a child must have a physical exam with in 15 days after admission. The current flux of the Medical Assistance insurance system has made this 15-day time line impossibility. Our 5 county area has somewhat shifted from ACCESS to 1 of 5 HMO plans, so our local physicians/dentist have dropped ACCESS. Youths from other counties continue to utilize ACCESS – which our local doctors no longer will accept. If the medical insurance card arrives with the admission packet – which is rare – the task of:

(1) locating a physician who accepts that particular health insurance,
(2) who is accepting new patients, and
(3) who is not booked for the next month, and then properly filing to change to a new geographically proximal physician is unlikely to be managed within a 15 day time frame (which is actually 2 work weeks and 1 day)/

Pennsylvania Children and Youth Administrators, Inc.



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REVIEW COMMISSION

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Division of Program Planning and Development

APR 15 1998

Received:
Refer to:

To: Robert L. Gioffre
From: Charles R. Songer Jr.
Executive Director
Re: Proposed 3800 Regulations
Date: April 14, 1998

Attached is a consolidation of specific comments made by our membership. We appreciate the expanded opportunity to respond to such a sweeping set of proposed regulations.

Additionally, several concerns ran throughout the general comments that we received:

1. Consolidation of the regulations was accomplished at the cost of lowering health, safety and supervision standards.

2. Disincentives to parental involvement have been created.

If our office can be of any further assistance in this important project, please contact me at your earliest convenience.

Thank you.

3800 Proposed Regulations:

3800.16 Unusual Incidents

-reporting of minor injuries that do not require medical treatment as Unusual Incidents is wasteful of agency & facility time, unless specifically requested;

3800.54 Child Care Supervisor

-the lowering of staff education requirements is not consistent with the goal of providing a higher level of safety and security for children in placement;

3800.55 Child Care Worker

-the staff/child ratios are too low, especially for sleeping hours; the staff would not be able to handle even a minor disruption at these levels;

3800.56(d) Supervision

-the differentiation of staff by dependency versus delinquency in joint facilities would require excessive duplication of staff;

3800.89 Temperature

-the maximum and minimum temperatures are extreme, especially for younger children;

3800.202(b) Behavior Intervention

-should be expanded to include behaviors that are a danger to others;

3800.271-273 Secure Care

-mechanical restraint use should be limited to no more than one hour or once the child is under control, whichever occurs first;

3800.281-283 Secure Detention

-more than one child can occupy a single bedroom, unless specifically contraindicated.

→ Bob Nyce

PARENTS INVOLVED NETWORK

The Pennsylvania State Organization of the Federation of Families for Children's Mental Health

1211 Chestnut Street - 11th Floor
Philadelphia, PA 19107
(215) 751-1800
(800) 688-4226

Are these regulations under your purview?

March 9, 1998

The Honorable Ellen Bard
Pennsylvania House of Representatives
P.O. Box 202020, Main Capital
155B East Wing
Harrisburg, PA 17120

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Ellen

Dear Representative Bard:

I am writing to express my concern about the proposed changes to the 3800 Regulations. At best, they are a generic reproduction of what already exists. At worst, they are harmful to the children of Pennsylvania and their families.

There are major points of concern that are missing which include:

- The complete absence of the values and principles of the Pennsylvania Child and Adolescent Service System Program.
- The parent partnership in developing and participating in services.
- Definition and recognition of the unique populations and their needs that will be served by this document. This document covers ALL children who are receiving any kind of treatment service, from a child who is seriously mentally retarded in a residential facility to an adjudicated youngster on a wagon train to an abused child who needs treatment to learn coping skills.
- Requisite of cultural competence in service delivery.
- Regulations covering other necessary staffing within the milieu of service delivery as it pertains to professional staff such as therapists, case managers, psychiatrists, psychologists, recreational and occupational specialists, nurses and administrators.
- The requisites around service plans are incomplete. There must be minimal required components for treatment plans contained within the service plans for those children who have a mental health diagnosis.

These are only a few points that are seriously problematic. Page after page has areas that are not only inadequate, but harmful to our children.

As a legislator, you are aware that people cannot rely on goodwill and intentions alone. These must be translated to regulations or they are only as good as the speaker of the moment.

The proposed regulations are in need of serious rewriting to truly address the needs of the children at stake - not the needs of the providers. I strongly urge you to read these Regulations and express your view to the Chairperson of the committee charged with the review.

The adoption of new regulations that have such an enormous impact should have greater opportunity for public review, comment and public testimony. Thank you for your interest and support.

Respectfully,

Glenda Fine

Glenda Fine
Director

PCCS

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April 7, 1998

Robert Gioffre
Office of Children, Youth and Families
PA Department of Public Welfare
P O Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre:

The Pennsylvania Council of Children's Services (PCCS) offers the following comments specific to Day Treatment Services in response to the proposed Chapter 3800 regulations for Child Residential and Day Treatment Facilities as published in the Pennsylvania Bulletin on February 14, 1998. PCCS has engaged both member and non-member agencies, reflecting the diversity of day treatment programs in operation in Pennsylvania, in discussions concerning these proposed regulations.

The comments contained herein reflect the generalized concerns. The inclusionary process structured by the Department throughout the development of these regulations has allowed for a productive dialogue. The benefits of this approach are evidenced by the limited number of issues raised specific to day treatment and the framing of suggested alternatives with consideration to the health, safety and general well-being of the children and youth affected.

Part of the challenge in drafting regulations applicable to day treatment services is the lack of philosophical consensus in the development of the programs. Day treatment varies greatly dependent upon whether its origins are within the children and youth, alternative education or behavioral health systems. We believe that these regulations should be styled in such a way that the intent of the regulation specific to health and safety can be met through documented alternative means. Our suggested revisions to the proposed language reflect this consideration.

In addition to the section specific issues which are identified, there are several issues which are philosophical and structural in nature including:

- Many day treatment programs pattern themselves on alternative education programs and provide services for an established number of hours per day similar to a traditional school day schedule. These programs view themselves as primarily educational in nature with an adjunct individualized, therapeutic element. They are structured to prevent placement or to facilitate reunification. No transfer of custody or delegation of parental authority is made to the day treatment program. This creates a significantly different scenario than is found in residential programs where services are

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purchased by county entities that have assumed custody of the children and youth served. The authority of providers of day treatment services in most situations is quite limited, much more than even a traditional school setting which is empowered by laws governing the scope of services.

- Grandfathering provisions for staff who do not meet the new educational requirements must be considered. Cost and program quality issues relating to the losing long term, effective staff as a result of the proposed requirements for education of child care supervisors are clear. The investment of these individuals who have proven themselves to be reliable, competent employees must be insured.

- While the proposed regulations have been presented as being relatively cost-neutral by the Department, providers of day treatment services clearly identify major cost implications. These costs relate primarily to staff training requirements, demands on staff time for documentation specifically in the area of unusual incidents and physical site issues. These additional dollars will most probably not be translated into any appreciable improvement in safeguarding the health, safety and well-being of children being served by programs regulated under the Chapter.

- Numerous references are made to actions which need to be taken "immediately" by the program staff. An expanded definition of what constitutes "immediately" is necessary to promote compliance. Clarification as to whether this implies within 24 hours, the same working day, or within some other designated time period will become a critical issue once the regulations go into effect given the new reporting and response requirements included.

- We have consistently encouraged the production and circulation of a Licensing Inspection Instrument at the same time the regulations are published in final form and again raise this issue. Many day treatment providers have limited experience with regulations specific to program operation and an operational guide with clarification of intent and implementation will facilitate compliance.

- Approaching protection of the safety, health and well being of the broad population of children and youth served under this Chapter has resulted in high standards for structure, restrictions and requirements. These protections and security levels often appear to run in conflict with promoted practices of least restrictive and least intrusive approaches. Recognizing the broad range of vulnerability levels of the total population of children and youth served in programs operated under this Chapter, the application of proposed standard language often infringes on the normalization of a typical youth served in a day treatment program.

- Numerous references are made to Department approved or certified training curricula throughout the proposed regulations. Where reference is made to department approved training, especially in the area of medication administration, the list of approved options should be readily available so as to promote compliance by providers. If standard training programs are accepted as adequate, consideration must be given to acceptance of the procedures, safety measures and time lines for certification prescribed within these training programs

Specific issues related to identified sections include:

§ 3800.16 Unusual Incident
(a) The 30-minute period for child being away from facility without approval of staff being defined as an unusual incident for the population of youth in day treatment programs is viewed as being overly restrictive. The majority of programs are open, housed in community-based settings and deal with adolescents who often leave the site as a self imposed form of exclusion to regain control and focus. Agencies document such activity and follow internal procedures to safeguard the youth in question. The initiation of procedures related to reporting unusual incidents and subsequent investigations will not result in an appreciable difference for the youth served and will require significant allocations of staff time and attention. Providers recommend an exemption for day treatment programs from this requirement.

Responding to the fundamental question "Is the child at risk?", the general response of day treatment providers indicates that given the type of youth served, leaving the site without staff approval for longer than a 30 minute period without instituting unusual incident procedures does not increase risk or place the youth in further jeopardy. This section evoked a strong reaction whenever it was reviewed by providers in various draft versions and still causes numerous concerns as is stands in the published version. The definition of unusual incidents is felt to be overly restrictive for the general children and youth population.

STAFFING
§ 3800.53 Director
We request a grandfathering inclusion to allow staff employed as of the date the regulations become effective to continue in the capacity of Director if they do not meet the educational requirements proposed by these regulations.

§ 3800.54 Child Care Supervisor
We request the same grandfathering provision as stated in 3800.53 above.

§ 3800.57 Staff training
(a) Issues are raised concerning the definition of direct contact with children. Does this include administrative, maintenance, and office staff who have direct contact with the children but who do not have direct responsibility for them?

(b) The requirement for 30 hours of training within the first 60 days of employment places an onerous responsibility and significant expense for the day treatment providers. New employees are hired as needed and usually cannot be trained in a group. The normal practice is for individual hires to be oriented to agency policies and practice and then to receive other trainings during their first year of employment as programs are scheduled or become available through external sources. The burden of completing these training hours in the first two months of employment, prior to working alone with children, is extreme. It requires a facility to invest considerable time and financial resources during the probationary period for a new employee with little immediate benefit to the facility from the additional staff.

Fire safety, first aid, Heimlich and CPR and crisis intervention are most typically available through outside sources at times established by the trainer. These programs have prescribed curricula based on requirements for initial and renewal certification. Many agencies have been cautioned by national certifying organizations concerning their liability and that of the individual employee in the event that an employee who is not "certified" in CPR and first aid administers such intervention. JCAHO standards which are notably stringent, indicates that one certified staff person per site per shift provides sufficient safeguards for residents in a facility. Reconsideration of the proposed requirement to this standard is requested. We also recommended that an employee be exempt from the requirement for training in CPR, First Aid, Crisis Management and Heimlich if valid proof of current certification is available.

While many day treatment providers do not administer medications, the availability of medication administration training is a concern as there is no exemption from this requirement. How often, where and at what cost will such training be made available? Is there a plan as to how existing staff will be trained in Medication Administration (Section 3800.188) to comply with these regulations once they are adopted?

CHILD HEALTH

The intent of day treatment is such that it should not include responsibility for providing medical care unless such services can be reasonably accessed through the public school system.

§ 3800.141 Child health and safety assessment

The option of demonstration that this health care information is available from another sources as meeting the intent of this requirement is requested. Time frames as proposed present a significant problem as assessment within a twenty- four hour period is not reasonable given the day treatment program structure.

The expectation that staff persons trained by medical personnel will be readily available to complete this initial assessment is unrealistic given the size and scope of most programs. Clarification is sought concerning parameters, restrictions and additional definition of the reference to "staff persons trained by medical personnel". While day treatment providers recognize need for basic health information, the general reaction is that the proposed regulations hold day treatment providers to a considerably higher standard than public schools serving the similar populations of children.

§ 3800.143 Child physical examination
Numerous issues were raised concerning the requirement for the day treatment program to arrange for a physical within 15 days of admission. This requirement places a far greater burden of the day treatment programs that placed on the public school system. Consideration of application of the same standards for physicals as is applied to school setting is requested rather than the frequency standards established by the American Academy of Pediatrics. Annual physicals are not within the scope of day treatment programming.

Suggested language for revision includes: *Where custody has not been transferred to the county children and youth agency, upon admission to a day treatment program, reasonable efforts to access the most recent physical completed by the school district or personal physician will be made and such information will be documented in the child's file.*

NUTRITION
While day treatment programs are exempt from requirements proposed in 3800.161 stipulating the three meals and one snack shall be provided to children, sections 162,163 and 164 should also be eliminated.

§ 3800.312 Additional Requirements
(4) The wording of this proposed regulation raised serious concern given the age and scope of youth served in the majority of day treatment programs. The expectation that children will be directly supervised at all times is feasible only while they are on facility grounds. Many youth are on their own for periods of the day, at other jobs or in independent activities, making direct staff supervision impossible. These options reflect individual needs of children and are a normal part of day treatment program operation.

Recommendations for revision of this requirement include deleting the word direct from supervision requirements or referencing this as a requirement to "monitor the child's activity". Suggested language includes: *Children shall be monitored while at facility or off site for planned treatment activity as part of their Individual Service Plan.*

(8) The additional requirement specified in 3800.312 (8) is of concern given the broad variations in arrangements for meals within the day treatment program structure. While some programs do provide meal service and have this cost built into their program per diem, the requirement that "a meal shall be provided" conflicts with many programs' practice of requiring participants to bring their own bag lunch. A meal break is a structured part of the program day. Suggested revision to this requirement includes: *A meal break shall be provided to the children at least every five hours they are at the facility.*

(9) As indicated above, the broad variations in program design, creates difficulty complying with the proposed regulation as stated. The reference to an evening snack as entitlement also caused a great deal of discussion and concern for many providers of day treatment services.

We commend the Department for its efforts to encourage comments and input from the provider community. PCCS is available for further discussion of the issues identified and looks forward to ongoing communication.

Sincerely,

M. Jeanne DeAngelis, ACSW
Executive Director

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April 3, 1998

Robert Gioffre
Office of Children, Youth and Families
PA Department of Public Welfare
P O Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre:

The Pennsylvania Council of Children's Services offers the following comments in response to the proposed 3800 regulations for Child Residential and Day Treatment Facilities as published in the **Pennsylvania Bulletin** on February 14, 1998. PCCS applauds the efforts of the Department and the Cross-Systems Licensing Project Staff to include the Council, other provider associations and individual private providers in discussions throughout the development of these regulations. This inclusionary process has allowed for a productive, ongoing dialogue serving to identify issues of concern early in this revision process and has often resulted in consensus. However, as expected in any major effort such as this regulatory revision, there are still areas of specific concern.

This list was compiled through a series of meetings with affected providers who are members of PCCS, reflecting concerns and issues comprehensively representative of residential programs in operation in the Commonwealth.

In addition to section specific comments which follow, we reinforce previously expressed concern regarding:

- The exclusion of State operated facilities from regulatory control and expectations which results in lack of parity and consistency in programming for children and youth. The same entitlements for health, safety and general well being should be maintained in all programs regardless of whether state, county or privately operated. In view of the "no reject" expectation placed on many private programs, it is reasonable to expect that the same standards be applied to program operation and service delivery in the public sector. A similar reaction is noted regarding residential programs which are educational in appearance but which deal with a vulnerable population or drug and alcohol residential programs providing services to children and youth.

  We maintain that any publicly funded program charged with responsibility for the care protection, treatment and rehabilitation of children and youth should be approved and monitored with similar diligence and expectations for the security of health, safety and overall well being of those served in out of home care.

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- Application of the broadest levels of protections and security often appear to run in conflict with preferred approach of least restrictive and least intrusive practices. Recognizing the broad range of vulnerability levels of the children and youth served in programs operated under this Chapter, the proposed standard language does, at times, infringe on the normalization of a significant number of children and youth in need of non-family based out-of-home care.

- Numerous references are made to Department approved or certified training curricula throughout the proposed regulations. Where reference is made to department approved training, especially in the area of medication administration, the list of approved options should be readily available so as to promote compliance by providers. Are there acceptable modules, videotapes, pre-post tests which the Department will recommend to service providers to insure compliance with provisions of this section. We would hope it will not remain the responsibility of the providers to locate, purchase or develop relevant curricula and then submit it to the Department for approval. If standard, nationally recognized training programs are accepted as adequate, consideration must be given to acceptance of the procedures, safety measures and time lines for certification prescribed within these training programs.

- Grandfathering provisions for staff holding positions who do not meet the new educational requirements must be considered. To ignore the reality of losing quality, long term, effective staff as a result of the proposed requirements for education of child care supervisors negates the dedication, investment and skill of employees who have proven themselves through experience. Current employment of these staff have, to date, not compromised child health and safety.

- Although the Department has presented these proposed regulations as being relatively cost-neutral, the response of the provider community is that there will be considerable ongoing costs attached to training and staffing requirements as well as possible significant one-time costs related to physical site modifications. These additional dollars will most probably not be translated into any appreciable improvement in safeguarding the health, safety and well-being of children being served by programs regulated under the Chapter.

- Numerous references are made to actions which need to be taken "immediately" by the facility/ program staff. An expanded definition of what constitutes "immediately" is necessary to promote compliance. Clarification as to whether this implies within 24 hours, the same working day, or within some other designated time period will become a critical issue once the regulations go into effect given the new reporting and response requirements included.

Specific issues related to identified sections include:

§ 3800.3 Definitions
Outdoor Program – Clarification is needed regarding the qualification that the primary program focus is on outdoor experiences. The primary focus of many outdoor programs is experiential education or behavior modification which takes place within an outdoor environment.

Relative – Legal guardian should be added in this definition of relative.

§ 3800.15 Child Abuse Reporting
More definite parameters regarding the expectations of the Department in "immediately" receiving reports of suspected abuse of a child are needed. Agency policies and procedures are normally developed to reflect the mandates of the Child Protective Services Law.

§ 3800.16 Unusual Incidents
This section evoked a strong reaction whenever it was reviewed by providers in various draft versions. It still causes numerous concerns as is stands in the published version. The definition of unusual incidents is felt to be overly restrictive for the general children and youth population. The scope of activities which would fall into the category of unusual incidents would result in a significant increase in the number of reports filed, would utilize staff time and attention in the completion of such reports and would most likely have no positive measurable effect on the population of children served overall. The projection by one agency is that an estimated 246 reports could be generated per month – many simply due to non-urgent medical care being provided through outpatient services at area hospitals and infractions of the 30 minute time frame for absence without staff approval. The burden this reporting expectation will place on the Department to review and respond to the reports as filed will be considerable.

The reporting process as outlined would frequently involve two reports – one to be completed on the prescribed form within 24 hours and another at the completion of the investigation of the alleged incident.

Such broad parameters of incidents identified as "Unusual" do not reflect any consideration for the vulnerability level of the population of children and youth involved. The truly unusual incidents – those that threaten the life, health or safety of children and youth are not at question here. As developed in accordance with the Chapter 3680 regulations governing the administration and operation of a children and youth social service agency, existing agency policies address the scope of activities which must be recorded, documented, investigated and reviewed as unusual incidents. Even in light of the recommended revocation of the Chapter 3680 regulations, adopted agency policies support careful record keeping and oral reporting practices when an injury to a child requires inpatient hospitalization or which may, in the opinion of the treating physician, cause death, serious disability or disfigurement and an occurrence, such as a fire, which threatens the health or safety of a child or requires temporary relocation of the child.

The situations identified above truly qualify as "unusual" in nature and would justify an instant, immediate plan to report and investigate. The other situations included in the proposed §3800.16 would be better classified and addressed as incidents subject to appropriate record keeping and reporting procedures. These varied issues of concern are most appropriately documented as incidents and would become part of the agency and child records. Recording and reporting practices are also influenced by recognition of program liability and the need for documentation of actions taken.

The proposed reporting requirements outlined in this section are more stringent than those identified in the Child Protective Services Law which structures the reporting process as requiring a telephone call immediately and a written report within 48 hours.

Other issues related to this specific section as proposed include:

§ 3800.16 (a)
Violation of a child's rights - The need for clarification of when a violation of a child's rights becomes an unusual incident – when it is alleged by a child? When it is observed in practice? When a preliminary investigation supports this finding that a violation has occurred?

Intimate sexual contact between children - Definition and clarification is required for activities which constitute "intimate sexual contact" between children. Once again, the broad application of standards places fairly typical adolescent behaviors within the realm of this classification as an unusual incident as opposed to an anticipated issue addressed through internal agency policies.

Outpatient treatment at a hospital - Filing an unusual incident report for all outpatient treatment provided though a hospital will be onerous. Some facilities, especially those in rural areas, regularly utilize this source for planned medical care as hospitals provide ongoing care though their clinics for routine health screenings and physicals.

Child leaving the premises for more than 30 minutes without approval - Thirty minutes as the criteria for an unapproved period of absence is too short in circumstances involving adolescents. A possible time line for qualifying such absence as an unusual incident may be "if child is still absent by the next meal or by bedtime". The age of the child determines the level of concern in this situation and uniformity in adhering to a 30-minute time frame will result in unproductive amounts of paperwork.

Issues related to notification of police in local jurisdictions vary. Many will not even accept a report of a missing child until a longer period of time has passed. Such policies as developed by individual agencies are often dependent upon a child's age and abilities more accurately reflecting an appropriate level of concern rather than arbitrary limits. Such policies are often tied to individual agency policies which are available for review by the counties contracting for service as well as the Department.

§ 3800.16 (d) and (f)
Additional costs for time to complete additional paperwork – two reports – as well as additional time and transportation costs to access other medical care providers in the event that hospital clinic use constitutes an unusual incident would be considerable. It is estimated that this regulatory change could result in the need for an additional staff position per agency at the rate of one per each 50 children in care. We recommend acceptance of agency policy and procedure manuals which address practices as they apply to unusual incident procedures rather than having them specified in regulation.

Parameters are not specified for the period of investigation of an unusual incident. Some guidelines as to the anticipated time frame for the completion of the investigation are requested to encourage consistency in expectations of the Department.

§ 3800.17 Incident record
Clarification is requested concerning the difference between the trauma and illness of children not needing inpatient hospitalization and the utilization of outpatient services within a hospital facility which are classified as an unusual incident.

§ 3800.32 Specific rights
(f) Visits with family - The "right", as outlined for opportunity to visit with the family at least once every two weeks, will create problems for many programs, especially outdoor wilderness programs. Some programs schedule an extended monthly visit which is built into the program design. The right to visit is not under dispute but the imposed timing of such visits is of concern. Reference to "visitation within the structure of the program", "as agreed to in the agreement for placement contract", "as identified in the program description" and/or "contract with the placing/funding entity" are suggestions to modify this requirement. It may also be most reasonable to indicate simply that the child has this "right to an opportunity to visit at least once every two weeks or as specified in the child's Individual Service Plan."

The child's refusal to exercise his "right for visitation" still remains a point of discussion. Does the child clearly have the right to refuse contact? Must court intervention be sought to support the child's position? Must there be documentation from a mental health professional that imposition of such contact would be detrimental to the child?

(h) Religious beliefs - While providers are intent on providing an atmosphere which allows a child to practice the religion or faith of their choice, considerations of the impact of such practices on others is raised. Clarification from the Department is requested concerning what is reasonable in this regard. Allowances can and are made for special dietary and clothing requirements; however, other issues may not be so easily incorporated or accommodated within a placement structure. Specific guidelines are needed concerning the obligations of facilities to meet this right of a child by extending reasonable efforts to insure the child's right to adhere to hours of worship and ceremonial rites, to have access to religious leaders, to wear identified religious dress and to adhere to dietary restrictions.

STAFFING
§ 3800.53 Director
We request a grandfathering inclusion to allow staff employed at the date the regulations become effective to continue in the capacity of Director if they fail to meet the educational requirements dictated by these regulations.

§ 3800.54 Child Care Supervisor
We request the same Grandfathering provision as stated in 3800.53 above.

§ 3800.55 (h) Age of Child Care Worker
The requirement for child care workers counted in the child ratio to be over age 21 is of concern to many service providers who rely on college age students to assist in evening/weekend activities or enhance staffing during summer months. If this requirement were modified to allow anyone subject to

the provision of child abuse clearance (over the age of 18) to be employed as a child care worker, it would alleviate issues relating to temporary summer employees, student interns and other college age employees.

§ 3800.56(d) Supervision
Children and youth are placed in an open community based program based on their history and the expectation that other children, staff and the community are not placed at risk. The proposed regulation requires awake night staff if even one adjudicated delinquent is placed in a facility where the normal staffing pattern would not require awake staff. Since most facilities do not operate on the basis of identifying discrete units or cottages based on the dispositional status of the residents, the reality is that the majority of units or cottages in facilities which accept both dependent and delinquent youth are mixed. Resident staffing permits facilities to structure normalization opportunities for children and youth in care while protecting their health and safety as well as that of the community. To alter these staffing patterns will significantly increase costs and not significantly alter the quality of services.

§ 3800.57 Staff training
Clarification is requested on several issues:
(a) Direct contact with children – does this include administrative, maintenance, food service, and office staff who have direct contact with the children but who do not have direct responsibility for them?

Volunteers often have a limited focus and scope of activity within a facility although many do come into contact with the children simply by virtue of their presence on the grounds of a residential facility. Requiring these volunteers to be aware of medication administration and crisis intervention procedures, other than in an extremely cursory manner, is of little value.

Application of this requirement for student interns places prohibitions on the opportunity for diverse, interactional experiences currently available to children in residential settings. Many student internships are of short duration and are activity focused. In the majority of situations, interns supplement not supplant staff and do not assume primary responsibility for the care of a child.

(b) The requirement for 30 hours of training within the first 60 days of employment places an onerous and significant expense on the facility both in terms of training time and financial costs. New employees are not usually hired in groups and therefore cannot be trained at the same time. The normal practice in for individual hires to be oriented to agency policies and practice and then to receive other trainings during their first year of employment as programs are scheduled or become available through external sources. The burden of completing these training hours in the first two months of employment, prior to working alone with children, is extreme. It requires a facility to invest considerable time and financial resources during the probationary period for a new employee with little immediate benefit to the facility from the additional staff.

Fire safety, first aid, Heimlich and CPR and crisis intervention are most typically available through outside sources at times established by the trainer. These programs have prescribed curricula based on requirements for initial and renewal certification. Many agencies have been cautioned by national certifying organizations concerning their liability and that of the individual employee in the event that an employee who is not "certified" in CPR and first aid administers such intervention. JCAHO standards which are notably stringent, indicates that one certified staff person per site per shift provides sufficient safeguards for residents in a facility. Reconsideration of the proposed requirements to this standard is requested. We also recommended that an employee be exempt from the requirement for training in CPR, First Aid, Crisis Management and Heimlich if valid proof of current certification is available.

The availability of training for Medication Administration is a specific concern to providers and is raised at this point. How often, where and at what cost will such training be made available? Is there a plan as to how existing staff will be trained in Medication Administration (Section 3800.188) to comply with these regulations once they are adopted?

§ 3800.106 Water Areas
Clarification is requested as to the requirement for a certified lifeguard to be present with the children at all times when children are using the "water area". A number of facilities have water areas which are not used for swimming purposes and are clearly posted as such. On occasion, these areas are used for fishing activities. Must a lifeguard be present even in such non-swimming situations?

FIRE SAFETY
§ 3800.121 Unobstructed Egress
(b) Electronic devices delaying egress for 15-30 seconds are a common means of safeguarding the population of children served in residential facilities. These are deactivated in the event of a fire allowing for immediate egress. Acknowledgement of approved use of these delay devices is requested by reference in the regulations.

§ 3800.122 Exits
Some community based group homes are located in older buildings which adjoin other structures, limiting physical space for permanently installed fire escapes from floors above ground level. Exception to this regulation for existing facilities is being requested on a case by case basis providing that the facility can verify alternative evacuation plans including the use of temporary ladders as approved by local fire authorities.

§ 3800.127 Portable Space Heaters
Are portable space heaters permissible in areas which children do not normally use such as staff and administrative offices?

§ 3800.129 Fireplaces
Many providers report the frequent use of fireplaces. Many older facilities have fireplaces which serve as a focal point in activity areas. Their current use is only under staff supervision with securely attached fire screens. Reconsideration of this prohibition is requested with a return to the language at 3810.129 in the 4/21/97 draft or 3810.81(y) of the current regulations.

CHILD HEALTH
3800.141 Child health and safety assessment
b. Persons conducting the assessment
Clarification is sought concerning parameters, restrictions and additional definition of the reference to "staff persons trained by medical personnel". The scope of this training and the required documentation to support this process must be clearly defined.

3800.143 (e) Child Physical Examinations
Consideration of acceptance of best practice standards as outlined by the American Academy of Pediatrics as guidelines for a physical examination rather that the mandated criteria listed in this section is requested. A complete, unclothed physical examination is intrusive and intimidating for children and adolescents who have been abused and may be an unnecessary experience at the time of admission. Recognizing the need to be able to document the overall physical well-being of an individual, this mandated requirement removes any option for a professional determination of medical necessity.

3800.145 Use of Tobacco
Once again, clarification is requested concerning the population of youth in residential placement who are over the age of 18. Is it reasonable or legal to expect facility staff to enforce prohibitions against smoking while out in public or in other settings which allow smoking? While recognizing the health implications, it is unreasonable to prohibit employees from having tobacco products in their possession, either in their purse or vehicle, while on the grounds of the facility.

STAFF HEALTH
§ 3800.151-152 Serious Communicable Disease
Clarification of the scope of what is to be considered as a serious communicable disease in anticipated as an inclusion in the interpretative manual rather than in the body of the regulations, however, specific considerations are needed.

NUTRITION
§ 3800.161, 162 and 164 Snacks/Deserts
References to snacks and desserts as an entitlement have caused a great deal of discussion in the provider community. While facilities do not withhold meals or drinks as punishment or even as part of a behavioral plan, reasonable limits and expectations connected with desserts and snacks have been used with success. While consensus was not reached among the provider agencies as to current practice, and a wide variation of policies was identified and this issue is being identified as a general concern.

TRANSPORTATION
§ 3800.171 Safe Transportation
(4) The request for consideration of removal of this age 21 requirement is again raised based on the issues and rationale previously stated in §3800.55.

MEDICATIONS

§3800.181 (d) Storage of Medications

Clarification on the intent in this section is requested. Do oral, topical and over-the-counter medication need to be stored separately from one another as well as separately from prescription medications?

§3800.187 Administration and 3810.188 Administration Training

Although the department approved medications administration training is known to providers of services to individuals with mental retardation, it is a training program generally unfamiliar to providers serving the children and youth population. As previously indicated, the availability, frequency and cost of such training is of specific concern to providers. The plan to certify all affected staff once these regulations are adopted will also require advance notice and special one-time considerations. Reasonable time frames for compliance must be added.

§ 3800.189 (1) Self Administration of Medications

The requirement that a child be age 13 to self administer medication, is not consistent with accepted practices for administration of insulin injections. Children so affected are taught as young as possible to be responsible for their own insulin injections and this regulation appears to conflict with accepted medical practice. Determination of the appropriate age for self-administration should be left to trained medical personnel.

BEHAVIOR INTERVENTION PROCEDURES

§3800.203-204 Behavior intervention procedure plan-Unanticipated Use

Following admission, especially in shelter facilities, it is often necessary to utilize crisis intervention procedures, specifically passive physical restraint and exclusion, more frequently than would otherwise be required by a particular child. The initial period of placement is frequently a crisis period for the child as adjustment to a new setting, new expectations and new peers adds to the stress and behavioral issues already creating problems for the child. We suggest that the first thirty days be identified as a period of time to develop the plan for behavior intervention as opposed to the identified number of incidents cited in §3800.204. This would allow such a plan to be based on observed, documented behaviors and a more in-depth assessment than is possible during the initial days of placement. If the provisions for unanticipated use of behavior intervention (§3800.204) were extended through the first 30 days of placement, the need for such a plan in some situations would be alleviated and certainly make it a more individualized, constructive plan in others. Clearly, the use of any intervention techniques during this initial period would be subject to clear documentation procedures and review and would be instituted within guidelines of the approved training programs for staff.

§3800.205 Staff training

(a) Department approved training program

A listing of Department approved trainings is requested to facilitate compliance with this regulation. There are many nationally recognized programs in crisis management and passive physical restraint currently used by providers. Each may recommend slightly different procedures and requirements for certification resulting in variations on application from facility to facility. If the Department intends to

structure this required training along the same lines as medication administration training, providers request information concerning availability, an outline of the curriculum and grandfathering procedures for staff certified through other mechanisms and costs.

§3800.208 Pressure Points
Application of pressure at identified points is a standard accepted practice with some passive restraint holds/interventions, specifically biting. This prohibition requires further clarification since alternatives for addressing biting behaviors while safeguarding the aggressor and the victim are limited. There is general agreement that pressure point techniques should never be used or permitted as a pain compliance technique.

§3800.209 Chemical Restraints
Concerns were raised in the discussion of this regulation as (c) (1) appears to be dictating medical practices requiring that a physician examine the child immediately prior to the administration of a drug on an emergency basis. The practicality of this requirement places an unrealistic expectation on the facility and will delay necessary intervention deemed appropriate by a physician during previous examination and consultation.

§3800.211 Passive Physical Restraints
(d) Positioning options and time frames may be limited given the situation, techniques included in training or physical environment where intervention occurs. If intervention is conducted according to acceptable practices, the child's well being and physical safety are addressed. Arbitrary regulatory limits and requirements may interfere with achieving the desired outcome from implementing the passive restraint techniques. This is an example of over-regulation occasioned by health and safety concerns regarding children and youth at the extreme of vulnerability. We would prefer that such concerns be addressed though inclusion of expanded requirements as is done with other program populations.

(e) The availability of a staff person as a dedicated observer can not always be guaranteed nor is it the most appropriate use of staff resources in the event of a true crisis. Although this requirement is accepted as optimal, the reality in practice is that it is not always feasible and it is a requirement that should be applied "whenever possible".

§3800.212 Exclusion
(c) The need for short "time out" periods of seclusion, both self and staff imposed, are not uncommon with a younger child. The arbitrary limits imposed in the section may not best serve a child's needs at particularly stressful or stimulating times.

§3800.213 Behavior intervention procedure records
Reflecting the opposition to having a dedicated observer, opposition is raised to the requirement to have the staff person observing the crisis intervention procedure identified as part of the documented record of the incident.

SERVICES

§3800.233 Content of the ISP

General issues were raised concerning the extensiveness of inclusions in the ISP appearing to exceed issues related to the health, safety and well being of a child. A number of providers clearly indicated a preference for wording in the existing Chapter 3680.42 referring to Individual Service Plans.

In addition to the issues and concerns identified above, PCCS strongly recommends the Department produce and circulate a Licensing Inspection Instrument similar to that currently used by OMR at the same time the regulations are circulated in final form. The provider community would welcome having such an operational guide with clarification of intent and additional explanation of implementation criteria for compliance.

Again, the Council commends the Department for its efforts to encourage comments and input from the provider community and your willingness to extend the comment period. PCCS is available for further discussion of the issues identified. We look forward to ongoing communication on refining the environment through which children and youth are served in the Commonwealth.

Sincerely,

M. Jeanne DeAngelis, ACSW
Executive Director

PENNSYLVANIA COMMUNITY PROVIDERS ASSOCIATION

"promoting quality community services for persons with mental illness, mental retardation, and addictive diseases"

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March 20, 1998

Mr. Robert L. Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre:

The Pennsylvania Community Providers Association thanks you for the extended opportunity to comment on the proposed Child Residential and Day Treatment Facility Regulations, as published in the *PA Bulletin* on February 14, 1998. Although we submitted initial comments on March 3, 1998, following a recent meeting with our children's providers additional issues were raised. We submit them here for your consideration as well.

§3800.16 Unusual Incidents.
In the sentence "...an assault on a staff person by a child that requires medical treatment for the staff person..." please clearly define medical treatment. Does this include seeing the facility's nurse for first aid?

In the sentence "...an incident requiring the services of the fire or police departments..." please clarify if a fire alarm, accidentally set off by a child, is an "unusual incident".

§3800.143(e)(6) Child Physical Examination.
Please establish protocol that defines a method of monitoring highly contagious illnesses without contradicting the legal ramifications of confidentiality of certain highly contagious diseases, such as HIV.

§3800.145 Tobacco Prohibited.
The section prohibits the use of possession of tobacco products by staff persons on the premises of the facility. Please define premises for this regulation. Where is staff expected to keep tobacco products that they may have for breaks away from the facility?

§3800.201 Behavior Intervention Procedures.
"Behavior intervention procedure" is a technical term used to refer to a class of procedures that include many positive clinical procedures, not just aversive or restrictive ones. By using the technical term as a label for the subset of aversive or restrictive procedures, some providers and licensing reviewers might misconstrue the intent of this section and inadvertently assume that other, clinically effective, positive approaches are to be regulated or forbidden

as well. We would thus recommend a more definitive, less confusing title for this section, such as "Restrictive Procedures".

§3800.209(c)(1)(2) Chemical Restraints.
Please define "examined" as used in this subsection. A face-to-face evaluation by a physician effectively prohibits use of chemical restraint when physicians are not on site (e.g. evenings, weekends) which seems unreasonable.

If a face-to-face evaluation is required, please consider rewording the statement to allow an RN or LPN, in consultation with the physician, to make those decisions.

If we can be of further assistance in the clarification of these comments, please do not hesitate to call. Again, thank you for your time and attention to these matters.

Sincerely,

Kris Ericson, M.PsSc.
Children's Policy Specialist

Center for Juvenile Justice Training and Research

Juvenile Court Judges' Commission

Shippensburg University

Feb. 17, 1998

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To: Robert L Gioffre
OCYF - Penna. Dept. Public Welfare
Fax: 717-787-0414

Fr: J.K. Mullen
CJJTR - Shippensburg University
Fax: 717-532-1236

Re: Proposed residential care regulations:

I have read with interest the proposed regulations for residential care that appeared in the Penna. Bulletin - Feb. 14, 1998. Congratulations to Karen, Ann, you and the other staff involved in bringing theproject to this point. My comments are limited to the areas of Staff Training and Behavioral Intervention procedures. They are as follows.

1. 3800.57 Staff Training - there is specific mention for direct care staff to have annual training in CPR - First Aid - Heimlic technique. Part of the reason for annual training here is the fact that the physical skills involved in the training may evaporate if not used. These are skills that must be refreshed to insure staff are ready for the emergency medical situation.

   3800.205 (a) Behavior intervention Training - There is a requirement for annual training in behavioral intervention procedures for staff who use such procedures. Again the physical skill refresher is considered.

   Should 3800.205 (a) be mentioned specifically under 3800,57 if it is an annual requirement ? Is this not the same as the CPR/Fa/Heimlic requirement ? Not doing so seems to suggest that it may not be the same type of requirement.

2. 3800.202 (b) - This indicates that behavioral intervention can only be used to prevent a child from "injuring himself." This eliminates intervention when a child may be injuring others. Caretakers have a responsibility to protect residents. Also, I would favor the option to intervene when serious property damage is occurring and when there is a serious disruption to program. We cannot allow children in care to trash the house. This is an infringement on the rights of other residents to a safe and therapeutic environment. From my experience, behavioral intervention is appropriate in these circumstances under "least intrusive" guidelines. Too, there are times when a single youth's misbehavior will hold a program hostage. For example, a youth refuses to follow fundamental rules or expectations of the program. In such cases staff often have to literally pick the youth up and carry them where they refuse to go. Programs need this kind of flexibility. When such intervention is imposed using "least intrusive" guidelines and when the intervention is documented, the youth group is protected from harm and assured that program service continues.

   Behavioral intervention should be used to protect the individual youth and the youth group in residence. If we only allow intervention when there is harm to self, we neglect our responsibility to others.

3. 3800.204 Unanticipated use - does "after a procedure is used four times" mean after a single procedure has been used four times, or after there have been four occasions in which behavioral intervention has been used ? The former might be interpreted as the repetition of a specific procedure four times, while the latter indicates four intervention events.

4. 3800.208 - Pressure points - One of the things not addressed in the regulations is physical techniques used to escape from physical harm. (i.e. grabs - chokes - hair pulls - bites) Regarding "bites" the technology that I teach uses a pressure point to escape from a bite. While I agree with not allowing pressure points to restrain, I think the bite escape falls into different circumstance. I think the bite is such a serious behavior with such potentially serious outcomes that a pressure point release technique is warranted.

   This may not need to be covered in regulation since it is an escape and not a restraint. If that is the case however, oversight staff would have to be alerted to acceptance of this pressure point release.

Bob, thanks very much for the opportunity to be involved in the project. I would appreciate feedback on my suggestions.

FACSIMILE

Date: 2-24

To: Robert Goffre fax # _____

From: J Mullen fax # _____

Message: Response to Regulations

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PENNSYLVANIA COMMUNITY PROVIDERS ASSOCIATION

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REVIEW COMMISSION

March 3, 1998

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Mr. Robert L. Gioffre
Department of Public Welfare
P. O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre:

The Pennsylvania Community Providers Association thanks you for the opportunity to comment on the proposed Child and Residential and Day Treatment Facility Regulations published in the Pennsylvania Bulletin, February 14, 1998. PCPA represents over 245 providers of mental health, mental retardation and drug and alcohol services. Of these, more than 60% provide services to children. We have received significant provider input on the proposed rulemaking. It is on this that we base the following comments.

§3800.2 Applicability.
Further consideration should be given to including drug and alcohol treatment facilities. As the State moves in the direction of managed care and, in particular, carved out behavioral healthcare (mental health and substance abuse services), regulation should consistently reflect this integration. This document fragments these services. Does this mean that the health, safety and well-being of children in a drug and alcohol facility are measured differently than children in other facilities?

§3800.3 Definitions.
Under the definition for child, subsection (iii) we are concerned with the phrase "with a transfer plan to move to an adult setting by the age of 21..." Has thought been given to what will happen with a young adult, age 22, who is clinically determined to need to remain in an RTF for children? What if a transfer to an adult setting is not planned, but the hope is to move the young person back to the community? Must this person be discharged earlier than age 21?

Please provide us with clarification on FireSafety Expert. If a private agency employs an individual that was previously a loss control representative from an insurance company, and that is the role maintained at the agency, do they qualify under this definition for firesafety expert? Many providers hire their own loss control personnel to assure quality and safety is being met continuously. We request that providers be allowed to employ their own fire safety expert.

We request that 'legal guardian' is included in the definition of relative.

§3800.16 Unusual Incidents.
Providers should be able to determine what constitutes an unusual incident based on the individual needs of the population they serve. However, as the regulations are proposed, we have the following questions.

- What is the definition of facility/premises? Does it include the grounds of the facility, or are these two separate definitions?
- Who determines what constitutes a suicide attempt? A physician, psychologist, or direct line supervisor?
- What is the definition for outbreak of a serious communicable disease?
- What is the definition for intimate sexual contact between children?
- Why is it necessary for the facility to submit a final report? In certain circumstances, the providers must allow another agency to investigate and file a report. An example is a report of child abuse. Once that report is made to Childline, the provider is no longer responsible or expected to investigate. In fact, if the provider does investigate, they may be interfering.

§3800.17 Incident record.

- What is the definition for medication error?
- What type of property damage is included under this definition?
- What are the premises? Does this mean facility, campus, or grounds?

§3800.18 Consent to treatment.
Please define consent for the purposes of this document. Other chapters cited are vague in defining consent for treatment. Under what conditions is a child able to sign himself/herself out of treatment?

§3800.32 Specific rights.
Please clarify subsection (f). The phrase the child shall have the opportunity... at least once every two weeks... is very vague. At times it is clinically contraindicated for the child to visit with family. Does this mean that the child has to visit family every two weeks, and, if so, how does this affect the 40 day therapeutic leave for residential treatment facilities? Are these days included in that total, or over and above the 40 day therapeutic leave limit?

Subsection (g) discusses reasonable body search. What is the definition of a reasonable facility policy?

Subsection (k) discusses the child's right to be free from excessive medication. If this is true, does the child then have the ability to refuse treatment? Who determines the definition of excessive medication?

§3800.51 through §3800.53
We support the changes that have been made to these sections.

§3800.54 Child care supervisor.

- We request that agencies with staff that have been serving in these positions, but may no longer fit the criteria, be grandfathered in. Therefore we suggest the addition of language to support this.
- How is the Department defining awake hours, which are referenced in subsection (b)?
- If the site is scattered (i.e. separate cottages) must supervisory staff ratios be increased?

§3800.55 Child care workers.
We are concerned that this section contradicts TANF. Under TANF, mothers are encouraged to work. Subsection (h) places an age requirement on child care workers in order for them to be included in the ratio. We request that the age limit be lowered to 18 to compliment what TANF intends to do, and be consistent with past regulatory expectations.

§3800.57 Staff training.
In the past, agencies have not had to train nurses, physicians, record technicians and clerks even though they have some contact with children. Subsection (a) notes "each staff person". What staff need to go through the training?

Please clarify for us subsection (b). Can an individual in training be counted in the child/staff ratio if another staff person is also present?

Subsection (f) requirements are excessive. Request return to language supporting a minimum of six (6) hours of training per year. Twenty hours represents a training/work time ration of 20% for the minimal employee. This is excessive.

We understand the need for training in particular life saving skills. However, the requirement to provide these training's annually contradicts current schedules for training. For example, CPR training provided by the Red Cross mandates recertification every two years. There are a number of first aid courses that certify every three years. Subsection (g) would read better if it were written as such: "Each staff...shall complete training in first aid, heimlich maneuvers and CPR, and maintain current certification."

§3800.82 Poisons.
Although we agree that poisons should be kept in safe places in order that children are not in danger, we are concerned that this will also interfere with the rights of children. Many children must be helped to learn self-sufficiency. An example would be the adolescent learning to do his/her own laundry. Must staff remain with an adolescent the entire time he/she is doing laundry?

§3800.102 Child bedrooms.
We are pleased to see less restrictive square feet requirements.

§3800.103 Bathrooms.
Thank you for the flexibility to use bathtubs or showers.

§3800.121 Unobstructed egress.
Please clarify whether time delayed doors are included under subsection (b).

§3800.127 Portable space heaters.
Are space heaters permitted in areas where there are never children present, such as staff offices?

§3800.129 Fireplaces.
Are fireplaces that burn substances other than wood (i.e. wood pellets, gas fireplaces) acceptable?

§3800.143 Child Physical examination.
In subsection (e)(6) we are concerned that about violating the child's right to confidentiality. It is our understanding that all providers should be following OSHA Universal Precaution Guidelines in order to maintain safety and protect individual's rights. We request that this section be deleted.

§3800.144 Dental Care.
There are very few dental providers who accept Medical Assistance, and those that do have waiting lists at times exceeding six months. In these cases, is it the expectation of the regulations that the provider pay for services for children? We believe providers should not be held responsible for the payment of services they cannot access because of waiting lists or unavailability of service provider.

§3800.145 Tobacco Prohibited.
What about the nicotine addicted adolescent for whom a behavior modification plan is in place to eliminate use? Can this behavior plan not be utilized?

§3800.147 Emergency Medical Plan.
What is an Emergency Staffing plan? Is this defined at the discretion of the provider?

§3800.152. Serious communicable disease.
Please define serious communicable disease.

§3800.162 Quantity of food.
Subsection (b) states "...shall be available." Does 'shall' mean 'must'? How much extra food is expected to be prepared?

§3800.171 Safe Transportation.
Subsection (4) indicates an increase in age from previous regulation. Request that age of drivers be lowered to 18.

§3800.185 Medication Error.
Please define a medication error and who determines it as such.

§3800.187 Administration.
What is the definition of a Department approved course? Where and to whom is this training available?

§3800.189. Self-administration of medications.
Eliminate subsection (1). Add to Subsection (3) the requirement that trained medical personnel have determined the child capable.

§3800.202 Appropriate use of behavioral intervention procedures.
Subsection (b) excludes the potential risk to others that a client may pose. This section should be expanded to include the use of behavioral interventions to protect others from harm.

§3800.204 Unanticipated use.
Please define unanticipated use.

§3800.209 Chemical restraints.
Subsection (d)(1) does not indicate for how long the hourly monitoring must occur.

§3800.211 Manual restraints.
Subsection (c) should be modified so that prone position manual restraints are prohibited for all children.

Subsection (e) should also document the end of the restraint.

§3800.212 Exclusion.
Change subsection (a) to read "Exclusion is the removal of a child, *due to an adverse behavior,* from the child's..."

§3800.223 Content of the ISP.
Add Medication Plan to the list of required items to include.

In the past we have expressed the review that these regulations should be more provider-friendly in a managed care environment. We again express this opinion. Concern remain surrounding the additional layering of site visits these regulations represent to providers. Finally, if providers are meeting L&I building codes and safety requirements of their home community many of these expectations are duplicative in nature. We question who has the greater knowledge of safety codes for facilities, the Department of Public Welfare or individuals specifically trained in the safety issues outlined above?

If we can be of further assistance in clarification of any of these comments, please feel free to call on us. Thank you, again, for your attention to this matter.

Sincerely,

Kris Ericson, M.PsSc.
Children's Policy Specialist

Lisa Lowrie, LSW
Children's Policy Specialist

PCCS

PENNSYLVANIA
COUNCIL · OF
CHILDREN'S SERVICES

Robert Gioffre
Office of Children, Youth and Families
Department of Welfare
P.O. Box 2675
Harrisburg,PA 17105-2675

April 15, 1998

Dear Mr. Gioffre:

PCCS would like to take the opportunity to comment in greater detail on one additional concern that is raised by the proposed Chapter 3800 Residential and Day Treatment Facility Regulations as published in the February 14, 1998 Pennsylvania Bulletin. The lack of applicability of the chapter to drug and alcohol residential facilities providing care to children is an omission with which we take issue. Although there are a limited number of licensed children and youth agencies providing residentially-based drug and alcohol treatment programs, we believe that those programs should assure the health and safety of the children and youth served by them consistent with the same standard applied to the provision of other residential services. Providers of adolescent centered drug and alcohol services may be forced to choose between an OCYF approval to operate under Chapter 3800 as proposed or a license to provide drug and alcohol treatment services under the Department of Health. This dilemma is forced by the treatment service funding that is accessible only through DOH/DDAPL licensure. Since providers have traditionally been encouraged to diversify funding supports for treatment services through the use of alternative funding streams, this perceived need for choice is troublesome.

Several member agencies have expressed concern about the lack of health and safety protections for children and youth clients served in residential treatment facilities that are licensed under the Department of Health. In the best interests of children and youth in need of those services, it is reasonable to them, and to PCCS, that proposed Chapter 3800 should be expanded to include those programs.

Thank you for your consideration of this issue.

Sincerely,

M. Jeanne DeAngelis, ACSW
Executive Director

2909 North Front Street • Harrisburg, Pennsylvania 17110
(717) 231-1600 • FAX (717) 231-1605

(176)

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PCCS
PENNSYLVANIA
COUNCIL · OF
CHILDREN'S SERVICES

Division of Program Planning and

APR 1 5 1998

Re
Re

FACSIMILE TRANSMISSION

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: ROBERT GIOFFRE

AGENCY: OCYF

FAX NUMBER: 787-0414

FROM: JEANNE DEANGELIS

DATE: 4-15-98

TOTAL NUMBER OF PAGES: 2 (Including this page)
If you do not receive all the pages, please call as soon as possible.

TIME TRANSMITTED: _____

MESSAGE: ADDITIONAL COMMENTS - 3800's

2909 North Front Street • Harrisburg, Pennsylvania 17110
(717) 231-1600 • FAX (717) 231-1605

(57)

Professionals for Children, Youth and Families
State Conference

5120 Simpson Ferry Road
Mechanicsburg, Pennsylvania 17055
(717) 766-7654
(717) 766-5828 Fax

98 MAR 30 PM 3:39

REGULATORY
REVIEW COMMISSION

March 25, 1998

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Robert Gioffre
Department of Public Welfare
Off ice of Children, Youth, and Families
P.O. Box 2675
Harrisburg, Pa. 17105-2675

Mr. Gioffre,

The Board of Directors of Professionals for Children, Youth and Families (PCYF) respectfully submit our concerns regarding the 3800 regulations. Our organization represents the thousands of individuals who work with Pennsylvania's troubled youth in a direct care capacity. We feel that there are several aspects of these proposed regulations that are not conducive to safe and quality care for youth in residential placements.

Our first concern is that there appears to be no need to combine each of the populations that 3800 would cover into the same regulatory category. Different populations have vastly different sets of needs and present vastly different challenges to those responsible for their care. Combining the regulations and program expectations of the various categories waters down the requirements for some while effectively tying the hands of the staff who work with others. *We recommend that the 3800 regulations not apply to residential facilities for Juvenile Probation and Children and Youth clients and the 3810 regulations now in place be maintained.*

Some of the specific areas of concern for us are as follows:

1. 3800.16 Unlike many other populations, Children and Youth and Juvenile Probation clients present many challenging and difficult behaviors. Many of these clients are in placement due to very same behaviors that this section refers to as *unusual incidents*. Frankly, for most of the clients in this category the behaviors described are all too usual. Many of the agencies that have discussed the proposed regulations with us have projected anywhere from a 500%

to 2000% increase in the number of unusual incident reports that will need to be filed each year. This is a very costly regulation in both actual dollars and staff time. We recommend that the current unusual incident report requirements from 3810 be maintained.

2. 3800.55 We see no reason to lower the educational requirements for staff who work with some of Pennsylvania's most disturbed and challenging clients. 3800 places several new and sometimes difficult tasks on the staff who work directly with these clients. How can we lower the educational requirements at the same time? These requirements are not very high in the existing 3810 regulations. We are not aware of any agencies who have significant difficulty meeting the exiting requirements. Also, education should be something that the department and the State support. Having programs provide the bulk of its programming to impressionable children using people with high school diplomas or GEDs will send the wrong message. In addition, in the introduction to 3800 it is inferred that this change will somehow save agencies a great deal of money. The department must know that most direct care staff in Pennsylvania are greatly underpaid. In many cases a person can make as much or more money working in a fast food restaurant as they can working with children! How will agencies save money under these circumstances? Most of these people are hard working and dedicated professionals who have devoted their lives to helping troubled children. We should all be working together to give direct care staff higher status, not reducing their collective status by lowering standards. *The modest educational requirements of the 3810 regulations should be maintained.*
3. 3800.202/203 Again, unlike many other types of clients, Children and Youth and Juvenile Probation clients often display a very wide variety of challenging behaviors. This section will require the production of many behavior intervention procedure plans for most clients. In some cases dozens of these plans will be needed. Is this really how DPW wants staff to spend their time? Each plan will take an hour or more to produce, then parents (if available or willing) must approve of it, the client must review it, the placing agency must approve it, everyone must sign it, etc. This will prove to be a very cumbersome task that takes everyone's time away from working with kids. *We suggest that an agency's typical interventions for various behaviors be added to the Individual Service Plan.* The ISP is already in place and could easily and inexpensively be modified to include this information. All of the concerned parties previously listed have the opportunity to review

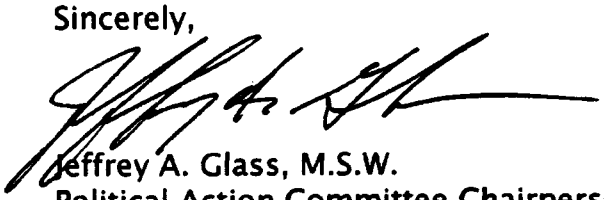
and sign ISPs currently. Strengthening this existing useful document would be an effective solution to this problem.

4. 3800.211 We applaud the department's efforts to refine this section of the regulations. Child safety is also a major concern for those who work with children. However, this section does require staff to change positions every 10 minutes during a restraint. We feel that this expectation could unnecessarily create dangerous situations for both staff and clients. Many young people in Pennsylvania's institutions are very large in stature. In addition, many of the staffs who work direct care are not large and powerful people. If you have ever had the experience of having to try to physically maintain a 17 year male who wants to beat up his roommate, you know what I mean. Couple this with the likelihood that there are up to seven other residents in the unit at the time and that you are working alone with these eight young people. This type of situation is very common, and often very frightening for staff. To now ask this same staff person the change positions when they will have enough trouble just managing this client, is in no one's best interest. However, changing positions could be used when working with younger children and in situations where additional staff are available to assist in the intervention. We strongly suggest that the this section (d) read, *when possible and in situations where injury to the client or staff will not be increased, the position of the manual restraint or the staff person applying the restraint, should be changed at about 10-minute intervals.*

There are other areas of concern. We look forward to the possibility of public hearings on these regulations to air all of our concerns.

Please feel free to contact me with any questions or concerns that you may have regarding this letter. We work together on behalf of Pennsylvania's youth in care.

Sincerely,



Jeffrey A. Glass, M.S.W.
Political Action Committee Chairperson
Professionals for Children, Youth and Families

CC: Senate Public Health and Welfare Committee
House Aging and Youth Committee

Pennsylvania Psychiatric Society

The Pennsylvania District Branch of the American Psychiatric Association

March 16, 1998

JoAnn R. Lawer, Esq.
Deputy Secretary of Children, Youth & Families
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

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Dear Ms. Lawer:

I am writing in regard to the Proposed Rulemaking on Child Residential and Day Treatment Facilities, as a member of the Child and Adolescent Psychiatry Committee of the Pennsylvania Psychiatric Society and a practicing Child and Adolescent psychiatrist. The proposed rules were published in the February 14, 1998 issue of Pennsylvania Bulletin (page 953).

Our comments, which follow, are limited to those aspects of the proposal which relate to my area of expertise: the provision of mental health and other medical treatments to children.

- §3800.55 (g) - the change proposed here is to drop the requirement that 50% of the direct care staff have two years of college and two years experience working with children. The new rule sets a somewhat lower standard - possession of a high school diploma or GED certificate. The new standard may be appropriate IF the proposed regulations pertinent to staff training are retained, and IF facilities are closely monitored to ensure that the training takes place and is effective.

- §3800.210. (c) Mechanical restraints - subsection (c) allows the use of certain equipment for "medical treatment," and then lists a few examples of such treatment. We are concerned that the examples will become the only exception to the prohibition against the use of such equipment for restraints. For example, the proposed rule might be used to disallow the use of helmets on children who routinely engage in "head banging" but who are not having seizures, or of mittens on children who routinely scratch or gouge themselves. Both devices are sometimes necessary to prevent self-injury. To forestall this possibility, we request that you add the phrase "but not limited to" in the third line of subsection (c): "treatment, such as, but not limited to, sand bags to limit movement after..."

- Training standards and regulations generally - the proposed rules should focus more on appropriate age-related developmental tasks, assisting children in meeting age-appropriate standards and emphasizing the development by staff of positive reinforcement programs that would facilitate these goals being met.

Thank you very much for directing these regulations to our attention and giving us the opportunity to comment.

Sincerely yours,

Mary Anne Delaney, M.D.

Mary Anne Delaney, M.D.

Executive Director
Gwen Yackee Lehman
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PP&A
PENNSYLVANIA PROTECTION AND ADVOCACY, INC.

Kevin T. Casey *Executive Director*
Hikmah Gardiner *President*

April 9, 1998

Original: 1927
cc: Wilmarth
Sandusky
Legal (2)

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market St.
Harrisburg, PA 17101

Re: Proposed Chapter 3800 Amendments
Child Residential and Day Treatment Facilities

Dear Mr. Nyce:

Our group is aware that the Department of Public Welfare has undertaken an enormous task in the development of the proposed 3800 amendments. There is significant responsibility and challenge to improve our systems of service beyond the present day to laying the foundation for the future.

We are writing to you to request a meeting with the members of your organization who will be reviewing the proposed changes. Within a few days you will be receiving our comments, both as a collective body and as individual organizations. All of the signatories on this letter represent stakeholders affected by these regulations.

By necessity, our comments are both lengthy and complicated. Our individual and collective level of alarm far exceeds our ability to adequately and completely delineate the problems with these regulations in the time allotted for comment. The comments which we have prepared beg discussion to insure it is both understood and the import is not lost in the volume.

These regulations will hurt many of our most vulnerable children and their families. They abrogate, and in some instances eliminate, most of the few protections that these children currently have, without replacing them.

116 Pine Street, Harrisburg, PA 17101 • (717) 236-8110
Toll Free (800) 692-7443 Voice and TTY • Fax (717) 236-0192

First, the regulations ignore treatment needs of the children who are placed in residential care for mental health purposes. In fact, they would repeal existing regulations (PA Code, Sections 5310 and 6400) which, among other necessary requirements, assure that certain facilities that serve children with serious treatment needs, have staff who are trained to meet those needs. The Residential Treatment Facilities have essentially replaced Pennsylvania's system of long-term mental health treatment for children. This was previously provided for by the (now closed) children and adolescent units in the State Hospital. The Mental Health Procedures Act, which governed treatment in those units, is very stringent on treatment issues. These regulations do not appear to be designed for treatment facilities at all, yet that is the sole purpose for many children's placements.

We understand that these regulations are intended to address only health and safety issues, yet they set the standards for programmatic areas such as staffing requirements, service plans and behavior intervention plans.

Second, the regulations allow for more restrictive placements and more restrictive and potentially harmful procedures than currently are permitted. Secure care facilities, where not only locked or fenced buildings are permitted, but where handcuffs and locked seclusion rooms would be allowed, are, for the first time, not limited to the delinquent population. This is a dramatic step to take without a thoughtful discourse on the subject. The regulations also divest children of a number of specific rights (currently in the 3810 regulations) such as the right to privacy of mail and the right to have family visits more frequently than once every two weeks.

Third, the regulations would repeal existing regulations for secure detention that were put in place twenty years ago to address abuses identified in litigation. They include, among other things, admission requirements and population capacity limits. While these regulations could be updated, their wholesale abrogation would set us back twenty years. Secure detention facilities do not have to contend with multiple licenses and, therefore, no purpose is served by repealing the existing regulations.

These are but a few of our concerns to demonstrate how serious these changes are. We believe that in meeting with you, we will be able to answer any questions you have and to explain our areas of major concern. These regulations will effect tens of thousands of Pennsylvania's children and their families every day and we believe that our collective group is representative of that constituency.

Additionally, we would ask that you extend an invitation to the members of the Legislative committees charged with review of these regulations. This would afford them the opportunity to ask us questions as well.

In anticipation of the meeting and in consideration of the number of parties involved, we have taken the liberty of comparing our calendars for dates that would maximize our ability to attend. The dates that would work best for the greatest number of our group are: the afternoon of April 24, the morning of April 29, and all day on April 30. Our contact person for arranging this meeting is my staff, Vickey Wood. She can be reached at (717) 236-8110.

Thank you for your consideration in this request and we look forward to meeting with you.

Sincerely,

Kevin T. Casey
Executive Director

Glenda Fine, Parents Involved Network of Pennsylvania
Robert Schwartz, Juvenile Law Center
Rachel Mann, Disabilities Law Project
Joe Rogers, Mental Health Association of Southeastern Pennsylvania
Len Reiser, Education Law Center
Sue Walther, Mental Health Associations in Pennsylvania

cc: The Honorable Kevin Blaum
The Honorable Leonard Gruppo
The Honorable Harold S. Mowery, Jr.
The Honorable Hardy Williams

PP&A
PENNSYLVANIA PROTECTION AND ADVOCACY, INC.

Kevin T. Casey *Executive Director*
Hikmah Gardiner *President*

April 9, 1998

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Mr. Robert L. Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-26755

Re: Proposed Rulemaking--55 Pennsylvania Code
Proposed Ch. 3800.00
Child Residential and Day Treatment Facilities

Dear Mr. Gioffre:

Thank you for giving us the opportunity and time to thoroughly review and comment upon your proposed regulations. We are sympathetic to the need to avoid inconsistent regulations which are applicable to the same facilities, and would welcome new and improved regulations for children's facilities. We look forward to a continuing dialogue in developing regulations to best serve Pennsylvania's most vulnerable citizens.

We have prepared a list of key issues that we believe must be addressed in any new regulations governing children's facilities. It should not, however, be considered an all encompassing list. In addition, we have suggested specific language on as many issues as we could. We can explain our concerns to you more fully when we meet with you in a few weeks.

Sincerely,

Kevin T. Casey
Executive Director

Glenda Fine, Parents Involved Network of Pennsylvania
Robert Schwartz, Juvenile Law Center
Rachel Mann, Disabilities Law Project
Joe Rogers, Mental Health Association of Southeastern Pennsylvania
Len Reiser, Education Law Center
Sue Walther, Mental Health Associations in Pennsylvania
Bill West, The ARC-PA

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ESSENTIAL ISSUES
Proposed Chapter 3800 Amendments
Child and Residential and Day Treatment Facilities

Staffing: The proposed regulations include staffing requirements but fail to require any staff who have the credentials to meet the treatment needs of children. There are no requirements for mental health professionals, mental retardation professionals, physicians, therapists, board certified child psychiatrists or psychologists. Most children living in residential facilities have the need for treatment of some kind, and many are placed in these facilities exclusively for the purpose of treatment. Current mental health and mental retardation regulations (at 55 PA Code sec.s 5310.41 and 6400.43-.44), which have at least minimal requirements for appropriately qualified staff, would be repealed by these regulations. It is essential that staffing requirements address these needs.

Service/Treatment Plans: The proposed regulations provide for service plans once every six months and would allow children to be in placement for 30 days without any service plan in place. This is in stark contrast to the requirements of the Mental Health Procedures Act (at 50 P.S. sec.s 7106-7108), which requires that any person in a residential mental health facility (which would include most of the children covered by these proposed regulations) have treatment plans updated monthly. The Act also requires that a physician participate in the monthly planning, a provision noticeably absent from the proposed regulations.

Discharge Planning and Maintaining Family and Community Connections: The goal for most children in placement is supposed to be to return them to the community as soon as possible. This requires not only treatment, but also discharge planning, strong family involvement whenever possible, and the community linkages that make the child's return to an appropriate setting possible. All these necessities should be spelled out in the regulations. There needs to be an individual responsible for discharge planning and for keeping the family, community and funding source connections strong for each child. The existing 5310.123(e) regulations, which require that such an individual be identified in Community Residential Rehabilitation placements would be repealed by these proposed regulations without replacement.

Secure Care: The proposed regulations provide for secure care facilities, where not only locked or fenced buildings are permitted, but where handcuffs and locked seclusion rooms would be allowed, without limiting these facilities to the delinquent population. This is a dramatic step to take without even a thoughtful discourse on the subject, and one to which many of us object. If it was not DPW's intention to allow secure care facilities for non-delinquent children, then these regulations should be explicit about that. We do agree with the need for regulations for secure care facilities for youth who are adjudicated delinquent.

Behavioral Interventions: The behavioral interventions permitted by these regulations in secure facilities, including six hour periods of seclusion and of handcuffing (with 10 minute breaks every two hours) that can be repeated indefinitely at the behest of a nurse and supervisor, are totally unacceptable even for delinquent children, let alone children with mental illness or mental retardation. They are considerably more severe than even the existing secure detention regulations (at 55 PA Code 3760.42) which limit handcuffing to one hour and provide due process protections if a court is asked to allow a facility to put a child in seclusion for more than 16 hours. While we also have some concerns regarding behavioral intervention in non-secure facilities (particularly with respect to chemical restraints), we do applaud the Department's prohibition against such measures as mechanical restraints and seclusion in non-secure facilities. The *non-secure* facility behavioral intervention provisions are in some respects an improvement over the existing 6400 regulations that currently apply to community residential facilities for people with retardation. Three years ago, DPW's Office of Mental Health, after meetings with families, advocates and providers, proposed thoughtful regulations on this subject that ought to be considered.

Education: Any regulations regarding residential facilities must provide clear guidance regarding a child's right to a free and appropriate public education in the least restrictive environment, the locus of responsibility for educational planning and the role of parents in that process. This includes the right to attend a school off the grounds of the facility.

Secure Detention: These regulations would repeal existing regulations for secure detention that were put in place twenty years ago to address abuses identified in litigation. They include, among other things, admissions requirements and population capacity limits. While these regulations could be updated, their wholesale abrogation would set us back 20 years. Secure detention facilities do not have to contend with multiple licenses and, therefore, no purpose is served by repealing the existing regulations.

CASSP Principles: The regulations should specifically state that CASSP principles are paramount. This would include respecting the role of parents in making decisions for their children, involving parents in treatment teams (including parents of children in the custody of children and youth except by court order), and treating children in the least restrictive environment which can meet their needs.

Children's Rights: Individual rights are needlessly repealed or curtailed by these regulations. For example, the right to privacy of mail, contained in existing 3810 regulations, is gone. Facilities could limit family visits to once every two weeks, when family visits are sometimes essential to reuniting a family or to making a medically necessary, but painful, separation from family bearable for a young child. Limitations on telephone privileges are too broad. These regulations will apply to many children who are placed due to disability or lack of adequate care, rather than delinquent behavior and there is no excuse for infringements upon their basic liberties.

Consent to Medical Care: Parental consent requirements for medical treatment, contained in existing 3810 regulations, are eliminated. The statues referenced in the proposed regulations do not fully address the issue of parental or adolescent consent for medical treatment, including the use of psychotropic medications.

Waiver of Regulations: The provision allowing DPW to waive the regulations is much too broad.

Health Screens: In the Scott v. Snider settlement agreement, DPW agreed to amend the Children and Youth regulations to require health screens that meet the requirements of federal Medicaid law. The health screens required by the proposed regulations do not meet those standards in several respects including blood level assessments, sickle cell screens, visions and hearing screens and services.

Confidentiality: Proposed regulations 3800.241-245 are silent as to the confidentiality of records. This fails to protect adequately the interests of children and families in keeping records and information confidential. The silence of the regulations on this point also fails to provide adequate guidance to providers. The confidentiality of records is already a source of great confusion without further confusing the subject by leaving relevant parties without any specific guidance.

Policies and Procedures Manual: Facilities must be required to have policies and procedures manuals that are available for review by parents and children addressing the many detailed subjects that are not suitable for regulations.

What is covered: Rather than simplify matters, these regulations will serve to confuse some programs because it is unclear which facilities are covered by these regulations. Are approved private residential schools that are also residential treatment facilities covered? Are Early Intervention programs covered? What are day treatment centers, and why would they be governed by the same regulations as residential facilities?

The following are recommended changes and or additions to the proposed regulatory changes to 55 Pa. Code

TO BE ADDED HERE (prior to 3800.1)
3800 Introduction
This chapter establishes minimum operating standards for facilities providing services to children and adolescents in Pennsylvania. Standards set forth in this chapter are based on the Department's view of best practice, including Pennsylvania's Children and Adolescent Service System Program (hereinafter referred to as CASSP) principles, and indicators of those same principles. (attachments #'s 1&2) Adherence to CASSP principles furthers the belief that children's needs should always be addressed in the least restrictive setting possible. When there is a need for placement in a residential facility, CASSP principles further a brief, intense, focused treatment and or rehabilitative program, to promote a successful return by the child or adolescent to the community. Specific outcomes are that the child or adolescent returns to the family whenever possible, or to another less restrictive community living situation. CASSP principles further the continued co-operation of all entities involved with a child or adolescent in offering strengths-based, culturally competent services.

3800.1 Purpose
The purpose of this chapter is to define minimum standards of care which must be met by an entity that serves children, exclusively, in order to be licensed by the Pennsylvania Department of Public Welfare. Further, the purpose of these regulations is to protect the health, safety and well-being of children receiving treatment in either a day program or a residential facility, through the formulation, application and enforcement of minimum licensing regulations that are consistent with CASSP principles.

3800.02 Applicability
[This section is confusing. It is not clear, for example, whether approved private schools, which are also residential treatment facilities, are covered or whether Early Intervention day treatment programs are covered. The Dept. should reword this section to be clear and unambiguous.]

3800.3 Definitions
1.remove term "through counsel" in sec. 1. ii.
2.Family member- A parent, child, stepparent, stepchild, cousins, grandparent, grandchild, sibling, half-sibling, aunt, uncle, niece, nephew, spouse, or other extended family member as defined and designated by the child and family.

3.change definition of Secure Detention to read; "A type of secure care located in a temporary residential setting, in which one or more delinquent or alleged delinquent children are detained.

3800.14 Fire safety approval
(e) The facility will have an emergency relocation of resident's plan.

THE FOLLOWING TO BE INSERTED HERE. (between 3800.14 and 3800.15)
3800. Policies and procedures manual.
The Director of any facility applying for license under this statue shall assure that a manual of site policies and procedures is compiled and regularly up-dated. The manual shall outline site specific rules for staff and children. It shall outline all policies for management, concerning both the physical site as well as operational guidelines for the treatment of staff and children and adolescents receiving services. The manual shall provide an operations guide for the implementation of policies established by this chapter.
a. Minimum areas to be addressed in policies and procedures relating to direct service of children and adolescents;
1.Program description
2.Statement of program philosophy which shall incorporate CASSP principles.
3.List of services provided by the program.
4.Description of the population to be served by the program.
5.Criteria for admission to the program.
6.Procedure for discharge planning and actual discharge from the program.
7.Policy regarding pre-emptory discharge from the program.
8.Policy regarding the confidentiality of, and or release and or review of records.
9.Policy for ensuring that the parent(s) have the opportunity to be actively involved in their child's program planning, including education.
10.Description of the arrangements that the facility has made to ensure that all children have an appropriate educational placement in the L.R.E.
11.Discipline policy and procedures.
i. The policy shall stress praise and encouragement.
ii. The policy shall stress individual accountability for behavior.
12.Description of the position of ombudsman.
13.Description of visitation and communication policies.

14.Description of temporary leave policy.
b. This manual must be available for review, at all times, by staff members, children and adolescents being served by the facility, parent(s), or other designated family member, representative(s) of the child specific funding entity, child's counsel and the court.

3800. Specific Prohibitions Regarding Discipline.
a. Abusive practices are prohibited, including:
1.Physical punishment inflicted in any way upon the body.
2.Requiring of children to assume positions that induce excessive discomfort or to continue physical activity to the point of exhaustion.
3.Group punishments for misbehaviors of individuals, except in accordance with the facility's written program description.
4.Punishment which subjects the child to ridicule or humiliation.
5.Excessive denial of regular program activities or denial of a medically necessary service solely for disciplinary purposes.
6.Denial of family visits or communication solely for discipline purposes.
7.Denial of home visits solely as a means of punishment.
8.Denial of sufficient sleep.
9.Requiring the child to remain silent for long periods of time.
10.Denial of food, water, shelter, clothing or bedding for any punitive reasons.
11.Punishment for bed-wetting or other toilet training issues.
12.Use of behavior affective chemical interventions for discipline purposes.
b. Children may not discipline other children.
c. Discipline may not be delegated to persons who are not knowledgeable of the child or children to be disciplined.
d. Behavior interventions as described in sec.3800.201 shall not be used for discipline.
(1)In the case of secure facilities, seclusion and mechanical restraints shall not be used for discipline purposes.

3800. Required documentation of community linkages.
a. The Director of any facility applying for license under this statue shall provide clear documentation of co-operative working agreements with agents in the community where the facility is located. These agents shall include, but not be limited to:

1.the local school district.

i. including the local school district's office of special education services.

2.the county Mental Health/Mental Retardation Program.

3.the county Juvenile Justice Program.

4.the county Office of Children, Youth and Families.

5.a community hospital for emergency medical and psychiatric services.

6.a community ambulance service.

7.Community practitioners for routine health, dental, vision and hearing care or affiliation with a local hospital providing clinics for the same.

3800.15 Child abuse reporting.

.....and notify the child's parent(s), other designated family member, if any, and the child's attorney for any court-committed child who was represented by counsel at the time of commitment, that a report has been filed. A copy of the report shall be made available to the parent(s),and other designated family member, for review, via overnight mail or hand delivery, and posted within 24 hours of the report being filed. Included with the report will be a description of safeguards which will be instituted to ensure the protection and well being of the affected child.

3800.16 Unusual Incidents

(a) Add: any adverse reactions to medications, any incident of assault upon or striking of a child by a staff member, and any incident of chemical restraint.

(d) The facility shall complete a written unusual incident report on a form prescribed by the department and send it to the appropriate regional office of Children, Youth, and Families, the parent(s), and other designated family member, of the child/children involved, the child's attorney for any court-committed child who was represented by counsel at the time of commitment and the funding agency, within 24 hours. The copy of the report sent to the parent(s), and other designated family member, will have all children's, other than their own, names deleted.

(g)A copy of unusual incidents reports shall be kept both in the facility files as well as in the individually affected children's records.

(h) delete. see "d"

3800.17 Incident record.

"....which occur at the facility; any incident where behavior intervention(s)(as defined in sec. 3800.201) have been implemented.

3800.18 Consent To Treatment

[This should be replaced with the existing regulations which appear at 3810.52]

3800.20 Waivers

a. [add]

4. A waiver is necessary to appropriately meet the needs of the children.

5. No waiver will be granted to any part of this chapter that provides for parent(s)' and other designated family member's input or participation or that is a required part of the child's record.

6. No waiver will be granted that, in any way abrogates parental, and other designated family member's, access to the child's record.

7. No waiver will be granted that effectively supplants any rights a child or parent(s) may have under laws and regulations ensuring educational rights.

8. No waiver will be granted that effectively supplants any rights a child or parent(s) may have under laws and regulations ensuring medical and health rights.

9. No waiver will be granted that in any way abrogates a child's, parent(s) and other designated family member's or advocate acting on behalf of those same parties, right to grieve.

10. No waiver shall be granted that would eliminate the position of ombudsman.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX to be inserted here

3800.30 Adaptive Communication and Translation

a.The facility shall provide translation services and any auxiliary aids, adaptations or services necessary, to children, parents and designated family members with sensory impairments or who do not speak English to ensure effective communication and equal participation in all aspects of the facilities programs, and to ensure that all notices can be understood and retained by the individual. Aids and auxiliary services include, but are not limited to, sign language interpreters, braille and audiotaped materials, and large print.

3800.31 Notification of rights

(a) Upon admission, each child and available parent(s), and other designated family member, guardian or custodian, unless court ordered otherwise, shall be informed of the child's rights and the child's and parent(s)', and other designated family member's, right to lodge grievances. A

written copy of these rights, and the right to grieve, including the process for grieving, established for the site, in a format that is easily understood by both the child and the adults, will be explained to and given to each of the parties.
If the primary language of any of the parties is not English, a written translation of these rights and process will be provided in the native language of the party affected. If the parent(s) and other designated family member, is not available at the time of admission, a copy of these rights and the right to file grievances, including the process, will be sent by certified mail to the parent(s), and other designated family member, on the first business day following the child's admission to the facility.
to be added:
(c) Child rights and the child's and family's right to lodge grievances shall be posted prominently in every bedroom and public area. These documents shall be printed in easy to understand language as well as utilization of graphics to insure that the youngest children served, or persons with literacy challenges, can readily comprehend these rights.

3800.32 Specific rights
(d) A child has the right to be provided with a written copy of the facility rules. The rules will be written using easily understood language. A written translation will be provided if the child's primary language is not English.
(e) A child has a right to visit with others in person and by telephone and mail unless restricted by court order.

(1)Visiting or other communication between a child and the child's attorney, clergy or placing agency shall not be restricted.

(2)The facility shall permit children to send and receive mail. Facility staff may not read the child's mail, either in-coming or out-going. If it is necessary to search a child's mail for possible contraband, the mail will be opened by the child in the presence of staff.

(3)The facility shall be equipped with telephones, either pay or free, for the children's use. The facility shall have procedures for children's use of these telephones which shall not restrict use without good cause.
(f) A child shall have the opportunity to visit, in person, with family at least once per week, and more frequently if feasable, in a pleasant surrounding, with minimal surveillance to ensure privacy, unless specific persons are restricted by court order.
(g) A child has the right to not practice any religion or faith or to practice the religion or faith of choice. The facility will not influence this choice and will facilitate the child's choice.

(h)A child has the right to rehabilitation and treatment.

(1)A child age 14 yrs. or older and the parents, on behalf, of a child under age 14 have the right to refuse mental health treatment.

(i) A child has the right to be free from excessive medication.

(1)The facility shall inform the parent(s) and child of any intention to use a medication for behavioral alteration purposes.

(2)The facility shall provide the parent(s) and child with the intended effect of the medication and the possible side effects of the same.

(3)The facility shall obtain a specific release from the parent(s) or child if the child is fourteen years of age or older prior to using the aforementioned medication.

i. This release will be included in the child's record.

(j) A child has the right to have money.

(1)The facility shall maintain a separate accounting system for the individual children's money.

i. Interest earned on a child's money shall be applied to the child's account.

ii. Money in a child's account shall be returned to the child at discharge.

(2)The facility shall develop a uniform policy for children's use of personal monies.

i. Reasonable limitations may be placed on the maximum amount of money any child in the facility may have access.

(3)Money earned, received as a gift or received as allowance by a child is the child's personal property.

k. The child has the right to appropriate clothing.

(1)The facility shall ensure that a child has clothing that is seasonably appropriate, well fitting, in good repair and appropriate to age, sex, and style commonly worn in the community.

(2)A child's clothing shall be identifiably their own and not shared in common with others.

3800.33 Prohibition against deprivation of rights.

A child may not be deprived of any specific or civil rights. These rights may not be used as rewards or sanctions. The right of a child or parent(s), and other designated family member, to grieve will be without fear of reprisals. The "Children's Bill of Rights" as adopted by Pennsylvania's State CASSP Advisory Committee, will be a cornerstone for determining rights violations. (attachment #3)

3800.34 Grievance procedures.

(a) A child or parent(s), and other designated family

member, has the right to.....without fear of retaliation.

replace paragraph "b" with....

(b)The facility shall develop and implement written grievance procedures for the child, the child's family and staff persons.

(1)The grievance procedure shall be written in a clear, understandable fashion and shall be designed so that all parties may file grievances without fear of retaliation.

(c)The facility shall inform the child and the child's family of the right to have an external advocate to assist in filing a grievance(s) and assuring thorough investigation and resolution to said grievance(s).

(1)If requested by the child or the family, the facility will insure an independent advocate who will be available at no charge to the child or family. The facility shall inform the child and the family of the facility's obligation to do so at the time of admission to the facility as well as at the time the facility becomes aware of the child's or the child's family's intent to grieve.

(d)The facility shall designate at least one staff person to function as an ombudsman for the purpose of receiving and processing grievances. The Ombudsman shall be responsible for ensuring that the grievance is addressed and full documentation, including the actual grievance and all follow-up actions are recorded in the child's record.

(e)Notation shall be made in the child's record confirming that the grievance procedure was explained upon admission, and by whom.

(f) No less frequently than once per quarter, a copy of all grievances and reports of all follow-up actions will be forwarded to the Dept. of Public Welfare, Office of Children, Youth and Families.

3800.51 Child abuse and criminal history checks. ADD: and staff controlled substance use.

.....6301-6385). Each facility shall develop a policy for screening current controlled substance abuse of applicants as well as a policy for maintaining a drug free staff.

3800.54 Child care supervisor.

(a) There shall be at least one child care supervisor on-site at all times children are at the facility.

(b) MOOT

3800.55 Child care worker.

(a) For facilities with 23 or less children, there shall be one child care worker for every eight children, during awake hours. For facilities with 24 or more children, there shall

be a child care worker for every six children, during awake hours.
(g)The child care worker shall have a high school diploma or general education development certificate and a minimum of 24 earned college credits or demonstrate through prior experience and the pre-employment interview process a broad scope of knowledge in the area of child development.
(1) At least 50% of the aggregate direct care staff will have at the minimum an Associates degree or equivalent.

XXXXXXXXXXXXXXXXXXXX
to be added between 3800.56 and 3800.57
3800.00 Mental Health Treatment Personnel
Facilities providing or purporting to provide mental health treatment or mental retardation services, regardless of whether the facility is designated as a Mental Health Treatment Facility or otherwise, will maintain necessary clinical and support staff to meet the treatment needs of the children. This must include, at a minimum, the services of a child/adolescent psychiatrist to participate in all treatment team meetings and to monitor medications, a child psychologist to provide and/or oversee therapy, and sufficient mental health and/or mental retardation professionals to provide all in-house services called for in the children's treatment plans. Information about the numbers and qualifications of treatment staff must be shared with families and placing agencies at or before every admissions interview.

3800.57 Staff training.
(a).....use of crisis procedures, and CASSP principles.
(b) (4) .....resuscitation, and prevention of HIV/AIDS and other sexually transmitted diseases, use and effects of psychotropic drugs.
add to (b)
(7) Working collaboratively with families and understanding and applying all CASSP principles.
(8) Understanding diverse cultural backgrounds and applying culturally competent and sensitive strategies in the facility environment.
to be added:
(k) All professional and supervisory staff who are in direct contact with children will receive at least 3 hrs. training in Special Education Regulations within 90 days of being hired.

3800.81 Physical accommodations and equipment.
[This provision must be changed because it would allow a

facility to refuse to serve children with disabilities rather than make the facility accessible. DPW has a legal duty to ensure that all facilities that it licenses to provide Children and Youth, Juvenile Justice, Mental Health/Mental Retardation, Medical Assistance, Education, Early Intervention or other services comply with the applicable provisions of the Americans with Disabilities Act.]

3800.85 Ventilation.
Bathrooms and bedrooms shall be ventilated by at least one operable window or mechanical ventilation. Kitchens and common areas where more than six people gather at a time must have ventilation needs determined by an air quality expert, prior to occupancy.
In any instance where mechanical ventilation is utilized, it must be maintained as often as necessary to insure it is allergen free.

3800.99 Recreation space.
The facility shall have regular access to large outdoor **and** large indoor recreation space and equipment that is kept in usable repair.

3800.101 Firearms and Weapons
a. No person, including facility staff and law enforcement officials, shall be allowed to have firearms or offensive weapons while in living or program areas of the facility.
1.The facility shall provide a safe, in an area not accessible to children, where firearms or other offensive weapons shall be secured for those persons such as law enforcement personnel who are licensed to carry such weapons, while they are on facility property.

3800.102 Child bedrooms.
replace section(c) with the following:
(c) Bedroom assignment.
1. Children who are newly admitted to a facility shall, preferably be assigned to a private room for no less than thirty days. If space availability does not allow for a private room for a new admission, than the child shall be placed in a room shared by no more than one other child, for at least thirty days.
2. Children who have been in residence for at least thirty days and have not demonstrated intimidating, violent, or sexually aggressive behavior may be assigned a room with no more than four beds.
3. Children who have been assigned a bed in a room with more than two beds who demonstrate intimidating, violent or

sexually aggressive behavior shall be assigned a bed in a private room or a room with no more than two beds. These children must have a period of thirty continuous days without these behaviors to be re-assigned a bed in a room with more than two beds.

4. Facilities that currently are not able to provide these accommodations shall be given a reasonable amount of time to facilitate the necessary changes in order to comply. "Reasonable time" will be determined by the regional offices, but shall not exceed six months from the applicable date of these regulations.

5. Any new facilities, or any additions to existing facilities, constructed after the effective date of this chapter shall have bedrooms that accommodate no more than two persons.

6. At no time will members of the opposite sex be assigned to the same bedroom.

XXXXXXXXXXXXXXXXXXXXXXXXXXX
to be added between 3800.104 and 3800.105
3800.0000 Living Rooms
There shall be living rooms for the regular, free and informal use of children, suitable for general relaxation and entertainment. These shall be furnished with comfortable chairs, tables, adequate lighting, pictures, books, bookshelves, radio, television, as appropriate to the needs of the children. Furnishings shall be durable and adapted for the use of the children. See § 3760.75, Living Unit.

3800.0000 Visiting Rooms
Space shall be provided where children may receive and talk with visitors privately.

3800.0000 Study Area
Space shall be provided where children can study without interruption, and without interfering with the play of other children. Rooms used for this purpose shall have adequate lighting, table space and chairs.

3800.122 Exits.
.....At no time will an emergency escape route be locked. In order to deter emergency exits as a means of elopement, emergency exits shall be alarmed at all times.

3800.130 Smoke Detectors and Fire Alarms
(b) There shall be an operable smoke detector in each bedroom.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
to be inserted at the beginning of the section on child health

3800.140 Child Health

The facility must obtain for each child health care and services that meet the requirements of the federal Early and Periodic Screening, Diagnosis, and Treatment Program, as specified further in this subpart.

3800.141 Child Health and Safety Assessment

(c) The assessment shall include the following:

(1)"........and a history of hospitalizations; medical diagnoses; medical problems that run in the family; and any issues experienced by the child's mother during pregnancy with the child.

3800.143 Child physical examination.

Replace with:

(a) A child shall have a comprehensive, unclothed physical examination within 15 days after admission. Children aged two years and over shall have such an examination annually thereafter. Children under two shall have such examinations in accordance with the periodicity schedule recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision," available from 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois, 60009-0927. The recommended periodicity schedule in effect at the time of promulgation of these regulations is attached as Appendix ___.

(b) If the facility obtains and maintains in the child's record written verification that the child had a physical examination prior to admission that meets the requirements of subsection (e) within the periodicity schedule specified in subsection (a), an initial examination within 15 days after admission is not required. The next examination shall be required within the periodicity schedule specified in subsection (a).

(c) If the child will participate in a program that requires significant physical exertion, a physical examination shall be completed before the child participates in the physical exertion portion of the program.

(d) The physical examination shall be completed, signed and dated by a licensed physician, certified registered nurse practitioner or licensed physician's assistant. A written record of the physical examination, including the date of the examination, the name of the treating practitioner, procedures completed and follow-up treatment recommended, shall be kept.

(e) The physical examination shall include:

(1) A comprehensive health and developmental history

(including assessment of both physical and mental health development).

(2) A comprehensive, unclothed physical examination.

(3) Immunizations, screening tests and laboratory tests, as recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision." The recommendations in effect at the time of promulgation of these regulations are attached as Appendix ___.

(4) Blood lead level assessments for children 0 - 5, unless the treating medical professional determines that such testing is unnecessary, after reviewing the results of previously conducted blood lead testing, which review and conclusion will be documented in the child's medical record.

(5) Sickle cell screening for African-American children, unless the treating medical professional determines that such testing is unnecessary, after reviewing the results of previously conducted sickle cell testing, which review and conclusion will be documented in the child's medical record.

(6) A gynecological examination including a breast examination and a Pap test if recommended by medical personnel.

(7) Communicable disease detection if recommended by medical personnel based on the child's health status and with required written consent in accordance with applicable laws.

(8) Specific precautions to be taken if the child has a communicable disease, to prevent spread of the disease to other children.

(9) An assessment of the child's health maintenance needs, medication regimen and the need for blood work at recommended intervals.

(10) Special health or dietary needs of the child.

(11) Allergies or contraindicated medications.

(12) Medical information pertinent to diagnosis and treatment in case of an emergency.

(13) Physical or mental disabilities of the child, if any.

(14) Health education (including anticipatory guidance).

(f)Immunizations, screening tests and laboratory tests may be completed, signed and dated by a registered nurse or licensed practical nurse instead of a licensed physician, certified registered nurse practitioner or licensed physician's assistant.

(g) Any time a physical examination of a child is conducted, a second adult shall be present. Any time a female child is examined, the second adult must be a female.

(h) Families must be given the option of arranging for any necessary health care services prior to the facility

providing same.

3800.144 Dental care.
replace with:
(a) The facility must obtain for each child dental care, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.
(b) A child who is 3 years of age or older shall have a dental examination performed by a licensed dentist and teeth cleaning for children who are three years of age or older performed by a licensed dental technician within 30 days after admission. Future exams and cleaning will occur at least semiannually thereafter. The dental examination for children aged 8 and 14 must include application of protective sealant on the chewing surfaces of their molar teeth, unless the dentist determines that application of sealant is unnecessary, which conclusion will be documented in the child's dental record.
(c) If the facility obtains and maintains in the child's record written verification that the child had a dental examination prior to admission that meets the requirements of subsection (b), an initial examination within 30 days after admission is not required. The next examination shall be required within the periodicity schedule specified in subsection (b).
(d) A written record of the dental examination, including the date of the examination, the dentist's name, procedures completed and follow-up treatment recommended, shall be kept.
(e) Follow-up dental work indicated by the examination, such as treatment of cavities, or application of protective dental sealant, shall be provided in accordance with recommendations by the licensed dentist.
(f) Families must be given the option of arranging for any necessary dental work or examinations and cleaning prior to the facility providing same.

XXXXXXXXXXXXXXXXXXXXXX
to be added
3800.000. Vision Care.
(a) The facility must obtain for each child vision screening and services which shall at a minimum include diagnosis and treatment for defects in vision, including eyeglasses.
(b) A child who is three years old or older shall have vision screening performed within 30 days after admission. Thereafter a child shall have vision screening in accordance with the periodicity schedule recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision,"

available from 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois, 60009-0927. The recommended periodicity schedule in effect at the time of promulgation of these regulations is attached as Appendix ___.

(c) If the facility obtains and maintains in the child's record written verification that the child had vision screening performed prior to admission that meets the requirements of subsections (a and b), an initial examination within 30 days after admission is not required. The next examination shall be required within the periodicity schedule specified in subsection (b).

(d) A written record of the vision screening including the date of the examination, the treating practitioner's name, procedures completed and follow-up treatment recommended, shall be kept.

(e) Follow-up services indicated by the vision screening, such as provision of eyeglasses, shall be provided in accordance with recommendations by the treating practitioner.

(f) Families must be given the option of arranging for any necessary vision care services prior to the facility providing same.

XXXXXXXXXXXXXXXXXXXXXXXXXX
to be added

3800.000. Hearing Care.

(a) The facility must obtain for each child hearing screening and services which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

(b) A child shall have hearing screening performed within 30 days after admission and thereafter in accordance with the periodicity schedule recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision", available from 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois, 60009-0927. The recommended periodicity schedule in effect at the time of promulgation of these regulations is attached as Appendix ___.

(c) If the facility obtains and maintains in the child's record written verification that the child had hearing screening performed prior to admission that meets the requirements of subsections (a and b), an initial examination within 30 days after admission is not required. The next examination shall be required within the periodicity schedule specified in subsection (b).

(d) A written record of the hearing screening including the date of the examination, the treating practitioner's name, procedures completed and follow-up treatment recommended,

shall be kept.
(e) Follow-up services indicated by the hearing screening, such as provision of hearing aids, shall be provided in accordance with recommendations by the treating practitioner.
(f) Families must be given the option of arranging for any necessary hearing care services prior to the facility providing same.

XXXXXXXXXXXXXXXXXXXto be added
3800.000 Child Behavioral Health Evaluation
(a) A child shall have a comprehensive behavioral health evaluation within 15 days of admission. This shall be so unless the child has had a comprehensive evaluation within three months prior to admission and that evaluation has been reviewed and approved by the CASSP co-ordinator, or his/her designee, from the child's home county and that evaluation established medical necessity for recommended services and parameters for the child's treatment plan.
(b) If the child requires ongoing behavioral health services and those services are provided by someone other than a licensed clinical psychologist or child psychiatrist, the child shall have a comprehensive reevaluation by a licensed clinical psychologist or child psychiatrist within six months of the initial comprehensive evaluation.
(c) For purposes of this Chapter, a comprehensive behavioral health evaluation shall mean an evaluation that includes information regarding the biological, social, emotional, psychological, and psychiatric domains of the child's life. The evaluation shall include, but not be limited to:
(1)interview with the child by the evaluating psychologist or psychiatrist.
i. for very young children or children who have mental retardation and are not capable of interacting in an interview type situation, this meeting may take the form of a play experience with the evaluator and observation of the child interacting with peers and adults by the evaluator.
(2)interview with parent(s) by evaluating psychologist or psychiatrist
(3)interview, if applicable, with last primary caretaker, if other than parent(s), by evaluating psychologist or psychiatrist.
(4)review of child's medical, developmental, family, psycho-social and academic histories by evaluating psychologist or psychiatrist.
(5)objective testing recommended by the evaluator and the results thereof.
(6) a written evaluation prepared by the evaluator based on all of the above.
(d)if English is not the primary language of the child and

his/her family, the evaluation must be conducted in the native language of the child and his/her family or, in the absence of a qualified evaluator who speaks the native language of the child and his/her family an interpreter will be provided.
(e)the evaluator must make note of any specific cultural distinctions that may impact the results of the evaluation or that were considered in the evaluation. i.e. language, rural or urban poverty, gang affiliation, religious affiliation.
(f) the evaluation must consider and note the areas of strengths and competencies of both the child and the family and recommendations for service and treatment must be based on these strengths.
(g)Absent a court order for this evaluation, any child age fourteen or older must give informed, written consent for this evaluation and for the use and dissemination of the results of this examination in developing service and/or behavioral health treatment plans.
(h)The written evaluation will be considered in the development of the child's ISP (as defined in sec.3800.221 part "b") and the evaluator will be available to meet with the ISP team.
(i) Families must be given the option of arranging for any necessary behavioral health care evaluation procedures prior to the facility providing same.
(j)Use of psychotropic medications.
If, as a result of the aforedescribed evaluation it is felt that a child needs to be treated with psychotropic medication(s), the facility shall be responsible for ensuring that any such medications are prescribed by a physician who knows the child, are adequately monitored by the prescribing physician or his/her replacement, and used only in conjunction with an active course of therapeutic treatment.

3800.146 Health Services
(b) The facility must obtain for each child such other necessary health care, diagnostic services, treatment, and other services, (such as medical, nursing, pharmaceutical, dental, dietary and psychological services) to correct or ameliorate defects and physical and mental illnesses or other mental health issues and conditions discovered by screening services and examinations.

3800.147 Emergency medical plan.
to be added:
(3) Families shall be provided with a copy of the emergency medical plan. Families will be notified immediately if the plan is implemented for their child.

3800.186 Adverse reaction
If a child has a suspected adverse reaction to a medication, the facility shall notify the prescribing physician and the parent(s), and designated family member, immediately.

3800.187 Administration.
#'s 2 and 3 deleted entirely

3800.201 Chemical Restraints.
to be added
(1) If chemical restraints are to be utilized as a behavior intervention, the facility shall obtain a specific release from the parent(s) for the use of this intervention. In the event that there is a court order specifically abrogating the parent(s)' medical rights, a specific release for the use of this intervention shall be obtained from the party designated by the court as having medical rights. This intervention shall not be deemed to be covered by a general "Consent to Treat" document signed at the time of admission.
(2) The release to be signed for use of this intervention shall contain, but not be limited to:
(a) a description of the intervention.
(b) behavioral criteria that must be met for this intervention to be considered.
(c) the drug(s) to be administered, the duration of effectiveness of the drug(s), any possible side effects of the drug(s) to be administered.
(d) a true copy of the section of this statue governing the use of chemical restraints

3800.202 Appropriate use of behavior intervention procedures.
(a) A behavior intervention procedure may not be used as a punitive measure for any reason, and may not be used for staff convenience or as a program substitution.

3800.203 Behavior intervention procedure plan.
(b) The plan.....parent(s),guardian and custodian if available, advocate, if the child or parent(s) request the presence of one, ...
to be added:
(h) At no time will chemical restraint be a part of a child's plan.

3800.204 Unanticipated use.
If behavior intervention procedures are used on an unanticipated basis there shall be an immediate (within twenty-four hours) review of the affected child's Individual Service Plan.

3800.205 Staff training.
(b) (2) Culturally competent child development principles appropriate for the age of the children served, to understand normal behavior reactions, in the context of diverse cultural backgrounds, to stress and other emotional triggers, at various ages.

3800.209 Chemical restraints.
(a) .....function of a child. Chemical restraints are to be considered the most drastic of the approved behavior intervention procedures. If a child's behavior is so uncontrollable that chemical restraint is used, the prescribing physician must document why he/she felt it was preferable to acute hospitalization. Chemical restraint may only be used when there is clearly demonstrable risk of the child being harmful to himself or others and cannot be controlled by any other method.
to be added:
(i) Any time a chemical restraint is used a review of the affected child's Individual Service Plan, including a review of the child or adolescent's Behavior Support plan, will be conducted within twenty-four hours.

3800.210 Mechanical restraints.
.....restraining sheets, papoose boards and similar devices.

3800.212 Exclusion
add
(f) Exclusion shall only be used when it is a part of a child's ISP and the child's ISP designates who may authorize its use and under what specific circumstances.
(g) Exclusion is prohibited in facilities that are mental health treatment facilities.
(h) Exclusion is prohibited for children under the age of twelve (12) years.

3800.221 Development of individual service plan.
(a) A short term Individual Service Plan, hereafter referred to as an I.S.P. shall be developed within 72 hrs. of a child's admission to a facility, but may be developed at the time of admission to the facility if all of the parties outlined in 3810.221 (a)(1) are present.
(1) The child, the child's parent(s), and other designated family member, the facility case worker assigned to the child, and a representative of the funding agency, if available, shall develop the short term I.S.P.
(2) If the parent(s), and other designated family member, is not present at the time of admission, the facility caseworker and/or the funding agency caseworker

will facilitate arrangements for the parent(s), and other designated family member, to participate within 72 hrs. of admission. Facillitation may include, but is not limited to; arranging for or paying for transportation to the facility, arranging for or paying for childcare for other siblings, arranging for non-traditional hours for the meeting.
(b) A long term I.S.P. will be developed for each child within 30 calendar days of a child's admission to the facility.

(1)The facility shall make all reasonable efforts to obtain records and evaluations from all previous placements and from the agencies involved with the child or adolescent, in his or her community, including educational records, prior to the convening of the I.S.P. team. Reasonable efforts shall include but not be limited to:

a. phone calls
b. faxes
c. overnight/priority mail

(2) The facility shall ensure that a complete psycho-social of the child or adolescent that is no more than thirty days old at the time of admission to the facility is available for review by the I.S.P. team.
(c) The same team with the addition of the child's case manager and therapist (for children and adolescents who present mental health issues)shall develop the long term I.S.P.

(1) The same provisions for facilitating the parent(s)' , and other designated family member's, participation will apply.
(d) All persons who participated in the development of either the short term or the long term I.S.P. will sign the I.S.P that they participated in developing. Next to each person's signature, each person will note whether they agree or disagree with the I.S.P. as developed. Space will be available to note reasons for disagreement.

3800.222 Review, revision and rewrite of the I.S.P..
change 6 months to 3 months.

3800.223 Content of I.S.P..
An I.S.P. shall include but is not limited to:
(1) Measurable and time limited goals and objectives, including education objectives, for the child or adolescent.
(2) Child or adolescent's current skill level in each area addressed by the goals and objectives, and how that skill level was determined.
(3) How progress will be measured, including by whom and what objective criterion will be used.
(4) An enumeration of the child or adolescent's needs.

(5) An enumeration of each service, including education and special education services, that will be utilized to meet each specific need.
(6) A behavior support plan that will be used across all domains of the child or adolescent's life, including integration with the child or adolescent's school program. In the case of students identified for special education services and protected by statute, the behavior support plan shall be developed so as to be a part of, or not in conflict with, the child or adolescent's I.E.P.
(7) A behavior intervention plan when appropriate. At no time shall a behavior intervention plan supplant a behavior support plan.
(8) A family involvement plan. This component shall include, but not be limited to:

i. Extent of clinical involvement of the family and the basis for determining the same.

ii. Transportation arrangements to and from the facility and accommodations, when appropriate, for the family, both for visiting and specific clinical involvement.
(9) A plan to teach the child or adolescent age appropriate health and safety information. For an adolescent in placement with her child, the plan will include information on well child care as well as parenting techniques.
(10) Anticipated duration of this placement.
(11) Discharge or transfer plan. This part of the I.S.P. shall contain, but is not limited to:

i. Objectively measurable criteria for discharge.

ii. Enumeration of necessary community linkages in the community that the child or adolescent will be discharged to.

iii. A list of all entities or individuals contacted if aftercare services are not available when the child is ready for discharge.
(12) Name of the person responsible for coordinating the implementing the I.S.P and arranging for aftercare services, as well as the name of the person designated to act as liaison with and for the child's school program, all other relevant community organizations or agencies and the parent(s) if that is a different person.
(13) An enumeration of any support services that will be put in place to enhance the probability of success with the school program, such as counseling, homework assistance, quiet place for homework, etc.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
to be inserted between 3800.225 & 3800.226
3800.000 Individual Treatment Plans
a. Facilities designated as Residential Treatment Facilities shall, in addition to the development and implementation of

Individual Service Plans as described in secs. 3800.221 through 3800.224, develop and implement for each child an Individual Treatment Plan as defined and described in the Mental Health Procedures Act (50 P.S. 7106-7108).

1.Facilities shall be responsible for the development of Individual Treatment Plans for any child who, during the evaluation period, or anytime thereafter, is determined to have mental health issues that affect the child's ability to function across the domains of that child's life. This requirement shall be met irrespective of whether the facility is designated as a Mental Health Treatment Facility.

b. The ITP shall be part of the ISP

c. The ITP shall be included in the child's record.

3800.226 Education

a. Each child who is of school age (as defined in 22 PA Code Ch. 11) shall have access to, and each child of compulsory school age shall participate in, an educational program approved by the Department of Education.

b. Each child who is eligible for special education under 22 PA Code Chs. 14 and 342, or is eligible as a protected handicapped student under 22PA Code Ch. 15 shall be provided with a program consistent with the requirements of those regulations.

c. In accordance with 24 P.S. § 1306 and 22 PA Code Ch. 11, each child's educational program shall be within the public schools of the district in which the facility is located, unless

1.the child's parents and the facility agree otherwise, or

2.the child is eligible for special education services and is found by the IEP team to require a placement outside of the district's public schools, or

3.the child is prevented by the terms of a court order from attending school outside the facility.

d. A facility that operates an on-grounds school may not require that the child attend that school as a condition of living at the facility.

e. The facility shall designate a staff person who will ensure that the child's educational needs are met, and who will serve as liaison between the school, the family, and the child. This individual must be adequately trained in educational rights and procedures, and must be familiar with the types of educational programs and services needed by the child.

1.This staff person shall also be responsible for providing timely and proper notice to the Department of Education concerning any child who is or is at risk of becoming a member of the class in *Cordero v. Commonwealth of*

Pennsylvania, i.e., any child who is without an appropriate educational program for 30 days or more or is at risk of going without such a program.

3800.242 Child's records.
(c) Child's complete record, including educational and special educational record, will be available for parent(s) review within 24 hrs. of parent(s) requesting same, except that mental health records of a child over the age of 14 will not be released without the child's consent.
(d) Parent(s), and other designated family member, shall be informed at the time of child's admission that 24 hr. notice is required to review child's record.

(1) If the parent(s), and other designated family member, was not present at the time of admission, a notice of this requirement shall be sent via certified mail to the parent(s) within 72 hrs. of admission.

3800.243 Content of Records.
add record of vision and hearing examinations.
(5) ISP's

(a)ITP's when present
(9) add: in accordance with section 3800.18
to be added:
(11) incident reports
(12) documentation of all discharge planning, including but not limited to:

i. all attempts to enlist the co-operation of the agencies in the community that the child or adolescent will be discharged to, including copies of all correspondence with said agencies.

ii. all attempts to link the child or adolescent and his/her family to other community supports, both formal human service entities and informal community supports.

iii. for children or adolescents who will need continuing mental health treatment and or supports, a letter from the Mental Health/Mental Retardation office of the community that the child or adolescent is being discharged to citing the name of the person in the community to be contacted to facilitate continuity of services upon discharge and to participate in the discharge planning with the facility

iv. documentation of a pre-discharge conference with the parent(s) or other designated family member, to insure cognizance of other family circumstances and needs that will be affected by the return of the child or adolescent to his/her family, in developing the discharge plan.
(13) Consent for use of chemical restraint.
(14) Consent for use of medication for therapeutic or behavior modifying purposes.

i. There shall be an individual release for each medication that falls within the aforementioned category.
(15) Copies of any reports of abuse filed that involve the individual child or adolescent.
(16) Copies of any grievances filed by the child or adolescent, the parent(s) and other designated family member, or an advocate acting on behalf of the child or adolescent or the parent(s) and other designated family member.
(17) The outcome of any aforementioned grievances.
(18) Copy of child or adolescent's I.E.P. for those children or adolescents identified as in need of special education by the education system.
(19)Medical Insurance Coverage
i. Medical Assistance recipient number and HMO member number, if applicable.
ii. Private insurance coverage, including identification number and name of primary insured party.

XXXXXXXXXXXXXXXXXXXXXXXXXXX
to be added:
3800.246 Confidentiality of Records.
[The proposed regulations repeal existing regulations on confidentiality (at 55 PA Code 3680.35 and 3760.91-92) without replacement. Confidentiality regulations are essential for all children and families regardless of whether the child is delinquent, dependent, court committed or a voluntary placement.]

SECURE CARE

3800.271 Criteria.
Secure care is permitted only for children who are adjudicated delinquent and court ordered to a secure facility or those children who are alleged delinquent and the court has determined that secure care is necessary.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
to be added here
3800.0000 Criteria For Admission to a Secure Facility
a. To ensure legal and appropriate placement of delinquent children in secure care pursuant to a court order, the facility shall adopt the Bensalem consent decree procedures for admission:
1.Prior to accepting a child in secure care, the facility will make reasonable efforts to receive in writing from the committing court the following:
i. A description of the offenses and

circumstances that make secure care placement necessary
ii. the needs of the child that must be addressed during placement
iii. a court order committing the child to a secure facility.

2.If the facility believes that a child's needs cannot reasonably be expected to be met by the facility's program, the facility will notify the committing court in writing that it believes that the commitment is inappropriate.

b. The facility shall notify the committing court, in writing, of the child's admission within forty-eight(48) hours of the child's arrival.

3800.272 Exceptions.

With the following exceptions, all regulations previously defined in this document shall apply:

3800.273 Additional Requirements.

(13)insert between (iii) and (iv)...

When mechanical restraints are used, the child shall have a staff person in the room whose sole responsibility is supervision of the child.

(iv).....may not exceed one hour.....aggregate use of mechanical restraints may not exceed four(4) hours in any twenty-four(24) hour period, except for transportation.

(vii)delete

(viii)delete

(14)(ii).....may not exceed one hour.....aggregate use of seclusion may not exceed four(4) hours in any twenty-four(24) hour period.

(v)....at least every one hour.....

(vi)....may not exceed eight(8) hours in any 48-hour period.....

(vii) If the facility seeks a court order to extend the length of seclusion, it shall give prior written notice to the child, and the child's attorney of record or the county public defender's office.

(16)The facility shall establish a separate log for the sole purpose of recording the use of seclusion and mechanical restraints. This log shall contain, at a minimum, for each incident of use:

i. The name of the child

ii. The date and time

iii. A description of the presenting behavior

iv. The name and position of the person making the decision for use.

a. The name of the staff person supervising the child.

v. A description of all interventions attempted to

alleviate the presenting behavior prior to the decision for use of seclusion or mechanical restraints.

vi. For instances where use beyond one hour is indicated, the name of the supervisor approving continued use and an explanation of the grounds for continued use.

(17) The facility shall ensure that any child who is in seclusion or is wearing mechanical restraints is not subjected to corporal punishment, or other abusive or degrading treatment, either by staff persons or other children.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
to be added
3800.274 Additional Requirements For Secure Facilities Regarding Discipline.

a. All provisions of this document regarding discipline are applicable to secure facilities. The following provisions are in addition to other requisite policies:

(1) The facility will provide the child with written notice of the alleged rule violations;

(2) The facility will provide the child with a hearing before a neutral fact-finder who shall not be the staff member who alleged the violation or that person's immediate supervisor. At the hearing, the child may select a staff person, another adult, or another child to act as his advocate and shall have the right to call witnesses in support of his position.

(3) All hearings conducted pursuant to this subparagraph shall occur within 72 hours of the events that led to the charges against the child and before the imposition of any penalties. The child shall have the right to appeal the decision of the neutral fact-finder to the Executive Director [of the facility] or his or her designee.

Secure Detention
xxxxxxxxxxxxxxxxxxxxxxxxxxx
[The existing regulations at 55 PA Code 3760 should not be repealed and these new regulations should not cover secure detention. If DPW insists on including secure detention in these regulations then at least the following changes must be made.]

add between 3800.281 and 3800.282

3800.000 General Requirements of Secure Detention

a. All secure detention shall be in conformity with the Juvenile Act and this chapter of regulations. The detention of a child under the following circumstances is inconsistent with the Juvenile Act and this chapter:

1. When the child is an alleged or adjudicated dependent child.
2. When the petition is not timely filed under Section 6331 of the Juvenile Act (relating to release from detention or commencement of proceedings).
3. When a detention hearing is not timely held under Section 6331 of the Juvenile Act (relating to release from detention or commencement of proceedings).
4. When it is not determined at the detention hearing that the conditions for admission are met.
5. When an adjudication hearing is not timely held under Section 6335 of the act (relating or holding of hearing).
6. When a disposition hearing has not been timely held under Section 6341 of the Juvenile Act.
7. When a child is placed in a detention center as a final disposition. See section 6352 of the Juvenile Act (relating to disposition of delinquent child)

b. When a facility has reason to believe that any of the conditions listed in subsection (1) exist, the facility shall immediately notify the child's attorney of record, or if none, the Public Defender's Office, and the Department's Office of Children and Youth, and shall make reasonable attempts to notify the child's parents. Unless there is a court order to the contrary, the facility shall release the child. Within 48 hours, the facility shall notify the Department of the following information in writing:

1. The child's name and birth date.
2. Whether there is a court order, and if so, the name of the court that issued the order and the name of the juvenile probation officer.
3. The asserted reason for the placement of the child in the detention center.

c. Upon notification, the Department may take appropriate action.

d. Children shall be held or detained only in a facility which is certified by the Department as an approved detention center. The holding of a child in any uncertified local detention facility prior to release or transportation to a certified center is prohibited.

e. No child shall be accepted by the facility who is younger than 10 years or 18 years or older, unless the child is 18 or older with juvenile status as defined by the act.

f. No child shall be accepted in detention service as a final disposition placement.

g. Alleged or adjudicated dependent children shall not be

placed in a detention center.
h. No child shall remain in a detention center longer than is absolutely necessary.

3800.000 Criteria for Admission to a Secure Detention Facility

a. As required by the Juvenile Act, within 24 hours of admitting a child or the next court business day, the facility shall verify that a petition was filed with the Clerk of Courts, and request a copy the petition.
b. Under the requirements of the Juvenile Act, no child shall be held in detention unless a petition is filed within 24 hours or the next court business day after the child is detained.
c. The facility shall document, and retain in the records, its attempt to secure a copy of the petition.
d. Under the requirements of the Juvenile Act, no child shall be detained without a detention hearing, which must be held within 72 hours after the child has been placed in detention.
e. No child shall be accepted by the facility after the detention hearing unless the detention hearing finds that secure detention is necessary for the reasons described Section 6325 of the Juvenile Act.
f. Upon admission, the following requirements shall be adhered to:

1. A staff member of each sex shall be available or on call at all times to receive children for detention.
2. A child shall not be fingerprinted or photographed
3. The staff shall verify whether the child's parents have been informed of the admission, and shall contact parents who have not been informed. If the parents cannot be contacted, the attempts made to contact them shall be noted in the child's record.
4. The child's physical and emotional condition shall be noted and recorded along with identifying data.
5. The child's personal property, if removed shall be properly itemized, signed for by the child and staff, and held safely.
6. The child shall be provided with a shower or bath, and clean clothing if needed.
7. Nutritional food shall be provided if requested by the child or deemed necessary.

h. A staff member shall inform the children what is expected of them while in detention and shall acquaint them with who will be providing specific services and what to expect from those providing service.

8. A handbook outlining roles, expectations, and rights, including grievance procedures, shall be issued. Staff shall explain or clarify the contents of

the handbook especially for children who do not have adequate reading or comprehension skills.

3800.000 Health Assessment Upon Admission
a. The facility shall assess all admissions for communicable diseases.
b. The facility shall assess all admissions to determine the need for alcohol or other drug detoxification services.
c. The facility shall develop all health screening and assessment procedures in accordance with the standards set forth by JDCAP.

3800.000 Placement Review
The facility shall ensure that the detention placement of each resident shall be reviewed continually, and a formal review by a staff member designated by the administrator or the court shall occur at least weekly, to demonstrate whether the child could be recommended for placement in a less restrictive setting. Such recommendation shall be entered in the child's record and forwarded to the court.

3800.0000 Notification of Unnecessary Detention.
a. The facility shall notify the Department on the toll free line at 800-932-0313 of every child detained in that facility for 35 days, with the following information:
(1) the child's name and birth date;
(2) the committing court and the juvenile probation officer;
(3) the date the petition was filed; and
(4) the reason the child is still in the facility.

PP&A
PENNSYLVANIA PROTECTION AND ADVOCACY, INC.

Kevin T. Casey *Executive Director*
Hikmah Gardiner *President*

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March 5, 1998

Mr. Robert L. Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, Pennsylvania 17105-2675

Re: Proposed Chapter 3800 Amendments

Dear Mr. Gioffre:

The Department of Public Welfare has proposed regulations that will affect thousands of vulnerable children in Pennsylvania for years to come, including children with serious mental health needs, mental retardation, and children dependent upon the state. Although it is stated that child/family/disability advocates were involved in the development of the content of the proposed regulations, that involvement was minimal. Some comments were submitted, but most were ignored.

As child/family/disability advocates, we have grave concerns about the proposed regulations. Streamlining requirements with a single license may not reduce the burden on the private system as promised. It also may not be enough to ensure that our most vulnerable children are protected in a system that is so diverse.

The adoption of new regulations that have such an enormous impact should have greater opportunity for public review, comment, and hearings. At the very least, there should also be an extension of time, minimally 90 days, to submit written comments, suggestions or objections regarding the proposed regulations. We will need time to contrast and compare various and lengthly current regulations which would be repealed and replaced by these proposed regulations. The 30 day comment period is insufficient.

116 Pine Street, Harrisburg, PA 17101 • (717) 236-8110
Toll Free (800) 692-7443 Voice and TTY • Fax (717) 236-0192

Please give us the opportunity to review and analyze these regulations with an extension of time so that the breadth and depth of this action can be examined. On behalf of the undersigned organizations I look forward to an immediate response.

Sincerely,

Kevin T. Casey
Executive Director

Glenda Fine, Parents Involved Network of Pennsylvania
Robert Schwartz, Juvenile Law Center
Rachel Mann, Disabilities Law Project
Joe Rogers, Mental Health Association of Southeastern Pennsylvania
Len Reiser, Education Law Center
Sue Walther, Mental Health Associations in Pennsylvania

cc: The Honorable Kevin Blaum
The Honorable Leonard Gruppo
The Honorable Harold S. Mowery, Jr.
The Honorable Hardy Williams
Secretary Feather O. Houstoun
Deputy Secretary JoAnn Lawer
Deputy Secretary Charles Curie
Deputy Secretary Nancy Thaler
Chairman John R. McGinley, Jr.

Pennsylvania Partnerships for Children

20 N. Market Square
Suite 300
Harrisburg, PA 17101-1632

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Lucy D. Hackney
Founder & President

Joan L. Benso
Executive Director

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March 5, 1998

Mr. Robert L. Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre,

I am writing to request that you extend the public comment period for the proposed regulations on Child Residential and Day Treatment. Due to the great detail involved in these regulations, as well as the fact that the regulations were published one week prior to the proposed regulations for the Child Protective Services Law, this allows inadequate time for consideration of such important proposals.

These regulations, as you are aware, relate to health and safety standards for children in residential placement. An issue of such importance deserves serious consideration. I would appreciate your consideration in delaying the comment period.

Sincerely,

Joan L. Benso
Executive Director

Pennsylvania Partnerships for Children

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Joan L. Benso
Executive Director

Lucy D. Hackney
Chair of the Board

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April 10, 1998

Robert L. Gioffre
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre,

The following are Pennsylvania Partnerships for Children's comments on the Departments proposed 3800 regulations on Child Residential and Day Treatment Facilities. We appreciate the Department extending the comment period on these regulations and hope that comments received will be valuable.

The following reflects our thinking:

3800.15 - We suggest that the parents (or other designated family member) be notified when a report of child abuse has been filed. Parents should also be notified of the safeguards which will be instituted to ensure the protection and well being of the child.

3800.17 - The section should require that any physical restraint or striking be recorded in the record of incidents. Recording should not be limited to incidents of injuries that require hospitalization.

3800.31 - This section should include such language that the format regarding grievances shall be easily understood by both the children and adults. In addition, is should be clear that if English is not the primary language of the child or family that a translation must be made.

3800.34 - This section should include a change to reflect that "grievance procedure shall be written in clear, understandable fashion and designed so that children may file grievances without fear of retaliation. The procedure should be explained to every child upon admission and notation made in child's record confirming that grievance procedure was explained."

3800.54 - We suggest that there be at least one child care supervisor on site at all times children are at the facility, compared to the proposed regulation that requires that a supervisor be available either onsite OR by telephone.

3800.55 - We are troubled by the Department's proposal to lower the baseline qualifications for the direct care staff of residential and day treatment facilities. We do not believe the decrease in education requirements will serve the best interests of the children. The proposed regulations require only that the worker have a high school diploma or GED certificate, as compared to the former regulations which require both a minimum age of 21 and that 50% of the direct staff have an associate's degree or equivalent experience. We recommend that this requirement be maintained. We feel that this level of maturity and education on staff's part is essential to protect the health and safety of the children in the facility as well as other members of the staff.

Children's Health

3800.140 - We recommend explicit language that "the facility must obtain for each child, health care and related services that meet the requirements of the federal Early and Periodic Screening, Diagnosis, and Treatment Program."

3800.143 - This section needs several additions and clarifications. Please clarify that a child shall have a comprehensive (to include both physical and mental health development), unclothed physical examination within 15 days after admission. Children aged two years and over shall have such an examination annually thereafter, in accordance with the periodicity schedule of the American Academy of Pediatrics. A written record of the physical examination shall be kept and documentation that recommended treatment was followed.

Additionally, the proposed regulations of this section, fail to mention the required blood lead level assessments for children aged 5 and under; the required sickle cell screening for African-American children; vision screening and services; and, hearing screening and services, as required in the settlement agreement of Scott v. Snider. Please refer to additional comments which delineate the requirements of the Scott v. Snider settlement.

3800.144 - We suggest that the facility should obtain dental care for each child, at as early an age as neccessary, as compared to the proposed regulations which require dental care for children 3 years of age or older.

We suggest that the regulations include the following additional section: that the facility must obtain for each child, vision screening and services, which at a minimum include diagnosis and treatment within the first 30 days after admission.

We suggest that the regulations include the following additional section: that the facility must obtain for each child, hearing screening and services which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

3800.145 - Please clarify regulations to: the facility must obtain for each child such necessary health care, diagnostic services, treatment, and other measures to correct or ameliorate defects and physical and mental illnesses and conditions discovered by screening services and examinations.

Behavior Intervention Procedure

3800.212 & 3800.271- This proposed regulation is unacceptable to the extent that it permits direct staff to initially order seculsion without clear guidelines. Seclusion is potentially harmful to children and should only be used for very short term control. We prefer the current regulation that reviews the basis for seclusion. Current provisions should be maintained. Similarly in **Section 3800. 271**, regarding the use of handcuffs. We suggest that DPW maintain current regulations so that it would be unacceptable for direct staff to initially order handcuffs. Clear guidelines are needed.

We thank you for this opportunity to comment on the above regulations.

Sincerely,

Joan L. Benso
Executive Director

#1927
DPW 5/4/98

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SUMMARY OF INCREASED CONSUMER PROTECTIONS IN PROPOSED CHILD RESIDENTIAL AND DAY TREATMENT REGULATIONS

MARCH 8, 1998

- New comprehensive requirements are proposed for child day treatment and private secure residential facilities; there are no site-specific regulations currently in place for these two facility types.

- A broad definition of unusual incident is proposed including more comprehensive reporting, investigating and follow-up requirements.

- Medication administration is heavily and specifically regulated to cover areas such as medications administration training, medications storage, logs, self-administration (this is now only in 6400 for MR).

- Use and restriction of crisis intervention procedures is heavily and specifically regulated including prohibitions of certain manual restraints (a first even from 6400-MR), adversives, pressure points, seclusion, and mechanicals; while current 6400 does regulate behavior management techniques beyond crisis intervention, the proposed regulations on crisis intervention techniques, even for 6400, are very prescriptive and protective.

- Fire safety requirements are detailed and prescriptive and include new provisions for exits from second floor, smoking prohibition, prohibition of locked egress, flammable and combustible materials, detectors for children or staff with hearing impairment, and smoke detectors.

- Physical plant requirements are strengthened and include new provisions such as lead poisoning prevention, swimming pools, poisons, hot water, and exterior conditions.

- Staff training requirements have been significantly increased to include more training hours, training up front before a person works alone with children, and many specific training areas required.

- New sections are added to address special protections needed for special program types such as transitional living, outdoor, and mobile programs (currently no special regulations are in place for these programs). For the first time, special health, safety, parenting and child development training is required for parents with young children living with them in transitional settings. Outdoor residential programs must provide for emergency communication, food and water supply, bathing, footwear, maps, safe equipment necessary for wilderness setting, etc.

#1927
DPW 5/4/98

SUMMARY OF PARENT/FAMILY INVOLVEMENT SECTIONS IN PROPOSED CHILD RESIDENTIAL AND DAY TREATMENT LICENSING REGULATIONS

55 PA CODE CH. 3800

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SECTION NUMBER	SUMMARY OF REGULATION
3800.16.(h)	Notification of unusual incidents
3800.18	Consent to treatment in accordance with applicable laws
3800.31(a)	Notification of rights
3800.31(b)	Statement of receipt of rights
3800.32(e)	Right to communicate with others
3800.32(f)	Family visits
3800.34	Family grievance procedures
3800.203(b)	Development and revision of behavior intervention plan
3800.203(d)	Signing and approval of behavior intervention plan
3800.221(c)	Development of ISP
3800.222(b)	Revision of ISP
3800.222(c)	Signing of ISP
3800.223(5)	Family involvement in ISP
3800.225(a)	Copies of ISP

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DPW 5/4/98

PROPOSED CHILD RESIDENTIAL AND DAY TREATMENT REGULATIONS
NUMBERS OF FACILITIES AND LICENSED CAPACITIES
March 12, 1998

TYPE OF FACILITIES	CURRENT CHAPTER	NUMBER OF FACILITIES	TOTAL LICENSED CAPACITY
Child Residential	3810	449	10,969
Community Mental Retardation (serving only children)	6400	29	
Community Mental Health (serving only children)	5310	45	
Secure Detention Centers	3760	23	712
Maternity Homes	3710	11	119
Day Treatment Facilities	3680	73	
Secure Residential	3680	20	
Residential Treatment Facilities	3810	45 Note--these 45 are also counted above as 3810	1,552

#1927
DPW 5/4/98

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PROPOSED CHILD RESIDENTIAL AND DAY TREATMENT REGULATIONS

COMPARISON OF PROGRAM REQUIREMENTS IN CURRENT CHILDREN AND YOUTH CHILD RESIDENTIAL REGULATIONS AND PROPOSED REGULATIONS

April 1, 1998

§3810.31.Admission criteria	not included	Admission and placement of children should be governed if govt. is funding service, but not for private placement; therefore not minimum licensing protection
§3810.32.Program must include recreation, education, privacy, family involvement, communication opportunities, counseling, and placement assessment	Recreation-§3800.99-space required, but not program Education-§3800.226 Privacy-§3800.32(g)-in part Family-§3800.3,16,18,31, 32,34,203,221,223,225 Communication-§3800.32(e) Counseling-§3800.146-if planned or prescribed Placement-not included	Most of these program areas are included except for recreation program and placement assessment; re: placement, see above
§3810.35 and 3680.42. ISP must include goals, objectives, services, family visits, duration of stay, person responsible for plan	§3800.223-goals, objectives, services, family involvement, duration of stay, person responsible for plan-included In addition, §3800.35 requires evaluation of skill level, behavior intervention plan as needed, plan to teach health and safety if child has child living with them, and a discharge/transfer plan	Proposed regulations include more components in the ISP than current regs and also a new requirement about implementation of ISP
§3810.35-ISP within 30 days and review every 6 months	§3800.221 and 222	Proposed regs are more specific about specific circumstances when ISP needs revision
§3810.35-ISP participation by family, child, placing agency	§3800.221	
§3810.35-ISP copy to family and placing agency	§3800.225	

CURRENT PROGRAM REGULATION	LOCATION IN PROPOSED REGULATIONS	COMMENT/RATIONALE
§3810.35-ISP quarterly reports	not included	Initial OPD draft included 3 month ISP reviews and monthly progress reports; frequency of ISPs and reports was discussed at length in work group meeting; conclusion reached through work group and written comment was that 6 month ISPs were sufficient
§3810.37/3680.43. Child discipline	§3800.32,164,201-213 Not included-specific discipline practices of extreme physical activity, group punishments, ridicule/humiliation, denial of program, denial of home visits, requiring silence for long periods, punishment for bed wetting, and sleep denial	While only a few extreme discipline practices are regulated in the proposed regs, use of manual, chemical and mechanical restraint are heavily regulated in the proposed regulations; in the current regs there is little regulation of restraints; regulation of discipline practices could cause serious concern from providers who may use specific program discipline programs; not raised in work group or in public comment to date
§3810.38/3680.44. Visitation and communication	§3800.32(e)-in part	
§3810.39/3680.45.Children's money	§3800.16(a)-in part-abuse or misuse of funds is an unusual incident	
§3810.40/3680.46. Religious practice	§3800.32(h)	
§3810.41/3680.47. Education	§3800.226	
§3810.53/3680.52.Consent for treatment	§3800.18	General statement referencing applicable consent laws recommended by OLC
§3680.41.Program description	not included	Not a minimum health and safety requirement; paperwork with no measurable outcome

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Dept. of Public Welfare
Robert L. Gioffre
P.O. Box 2675
Harrisburg, Pa. 17105-2675

Dear Mr. Gioffre,

I am writing to you as a parent of a child who has serious behavioral problems. My child has been in and out of treatment and programs for several years. It is very likely that she will continue to need services from a variety of programs for a very long time.

I am afraid that the regulatory changes your office is proposing will not adequately insure that my child receives the quality of services that she needs. As I look at the proposed regulations, it is clear to me that this document does not intend to insure that I am treated as a partner in developing services for my daughter. As parents, we fought very hard for this. Your regulations take that away from us and put us back in a position of blame.

I strongly urge you to revisit these regulations and write them in a way that is going to help children and families. Not keep them in the system.

Sincerely,

Alberta Smiley

Alberta Smiley
Parent

The Daron Emergency Shelter

5120 Simpson Ferry Road
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Date: March 30, 1998

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Mr. Robert Gioffre
Department of Public Welfare
Office of Children, Youth, and Families
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Mr. Gioffre:

The Daron Shelter Program is a 30 day emergency shelter for children and youths placed by various Children and Youth Services Agencies. Our shelter is coed and has a capacity of sixteen.

We have reviewed the proposed rulemaking regulations in the Pennsylvania Bulletin, Vol. 28, No. 7, February 14, 1998, and would like to comment on those areas that we feel will have a definite negative impact on our program.

3800.16 Unusual Incidents --we feel this section has been so broadened that it is now over regulating. Since we operate under a normalization standard the parameter of having to file unusual incident reports if a child leaves even for 30 minutes (who is possibly 16 or 17 years old) is an excessive regulation and in our opinion is not necessary. Voluntary absences by youths that have a possibility of endangering themselves have always been reported in a timely fashion and to all the required authorities.

3800.55 ChildCare Worker – we feel that the regulation requiring at least 50% of direct care workers having 2 years of college or 2 years of experience working with children or an equivalent combination of the two should be retained. A GED certificate is not sufficient qualification for a childcare worker in areas where children have various types of emotional disorders. The needs of today's children placed in our care require that our staff have a higher level of proficiency in the behavioral sciences not less.

3800.57 – Staff Training – some of the training requirements required to be done within a 60 day period after the date of hire, are going to be expensive on our program. Even though we may hire quite frequently it is only one or two staff and several areas of training require a certain number of new staff to make it cost efficient or even possible. (ie. First Aid and CPR by the American Red Cross can only be done if we have a certain number of employees).

Presently, the American Red Cross certifies a person in First Aid training for 3 years, the new regulations are going to require that this be done yearly – another example of an over burdening regulation that will increase the cost of staff training.

3800.144 – Dental Care –presently MA does not pay for semiannual dental cleanings--only annual. There is no way we can comply unless MA rules are changed or counties are going to agree to pay for this additional cleaning.

3800.151 -- Staff Health Statement –requiring staff physicals every two years is excessive regulation and would definitely be an increased cost to the program.

3800.201 – Behavioral Intervention Procedures – this section is probably the most disturbing. It will impact our ability to handle youth often with serious conduct disorders. Unfortunately, youths sent to us are often in a high state of agitation and crisis, because of this, they can be very volatile and aggressive in their conduct to themselves, others and staff.

3800.204 – Unanticipated Use – the time period and the number of behavioral intervention procedures stated by this section could possibly be used in just one day on a volatile, agitated child in crisis. I feel this regulation is an attempt to protect the delicate needs of the developmentally delayed population and will only handicap the children and youth segment.

3800.209 – Pressure Points – except in one instance, I agree pressure points should generally not be used. However, in the instance of biting using a maneuver at the jaw point of the face is the only safe way to stop a child from biting another individual. This regulation is making a blanket statement and needs to be amended to allow for this one maneuver.

3800.211 – Manual Restraints –in the area of children and youth manual restraints are rarely needed for less than one minute. If a child is complaint enough for a manual assist a manual restraint is not needed and not used. However, when restraints are used they generally last more than one minute and the new regulations in this area are only going to create additional paperwork and decrease our ability to address the conduct disorders these children display.

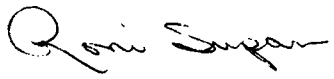
Additionally, there is not always an available staff person to act as an observer and documentor. Since our capacity is 16 youths we only have two staff on duty for certain shifts and this does not allow for both staff to be with one child while there are 15 children in other areas of the building.

We understand much of the rationale for the proposed changes in the regulations. Particularly the need to protect the developmentally disabled population who would be included in these cross-line regulations. However, as

revenues continue to dwindle and counties attempt to keep our per diem rates down many of these regulations will definitely impact our programs. Paperwork requirements will be increasing and childcare costs will increase significantly in some areas. We do not accept the departments statement that these regulator changes will at a minimum be cost neutral.

We submit our comments with due respect. However, we hope that certain sections of these regulations will be reviewed and revised to better meet the needs of children and youth agencies, while addressing the health and safety needs of our youths.

Respectfully,



Roni Supan
Shelter Program Director

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Mr. Robert L. Gioffre
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Harrisburg, PA 17105-2675

Dear Mr. Gioffre,

I am writing to comment on the proposed rulemaking re: 55 PA Code CHS. 3680, 3710, 3760, 3800, 3810, 5310, and 6400 as published in the Pennsylvania Bulletin, Vol. 28, No. 7, February 14, 1998.

I support the exclusion of licensed drug and alcohol facilities serving children from these regulations. The need for licensing specific to the drug and alcohol treatment services provided still needs to be maintained.

While these revised regulations address the health and safety issues of the facilities they are not sufficient to insure a minimum standard of care is in place for the treatment services. The staffing requirements regarding education, experience, training and ratios are good examples; these would need to be enhanced for a primary treatment service.

Thank you for the opportunity to comment. Please don't hesitate to contact me if you have any questions regarding my input.

Sincerely,

Kim P. Bowman
Executive Director

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