Northern Tier
Children's Home
Residential
Services, Inc.

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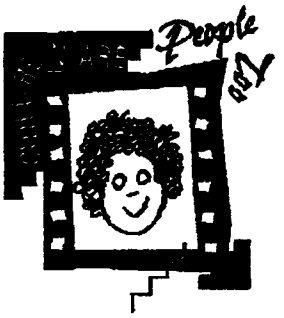
PO Box 33
Harrison Valley PA 16927



Children are people and therefore will be treated with love, respect, and understanding.

H. Jessie Van Dusen, Founder

April 27, 1999

Feather Houston, Secretary
333 Health & Welfare Building
Box 2675
Harrisburg, PA 17105

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Dear Secretary Houston,

I am writing you concerning the April 8th submission of the Chapter 3800 Residential Regulations by the Department of Public Welfare to the Pennsylvania legislature and the Independent Regulatory Review Commission. The Chapter 3800 Regulations have been crafted to replace 8 current sets of residential regulations. The program services covered by the 3800 regulations range from boot camps, independent living programs, group homes, wilderness programs and secure programs; serving clients with diverse needs extending from children that are in their own apartments meeting all of their own needs with minimum support: to clients that need assistance with basic hygiene to violent offenders. This is obviously too wide a range of services to be covered by one set of regulations. There have been numerous drafts of these regulations produced over the past two years. This designated final version has been impacted greatly by Advocate groups concerned about Mentally and Physically challenged individuals. Unfortunately the ill conceived design of the 3800 regulations will provide violent offenders the same rights and procedures as the mentally handicapped. These regulations remove many of the widely accepted tools and procedures for protecting the community, agency staff and other children in residential programs. For example, the 3800 regulations prohibit agencies from restraining a sex offender if he attempts to leave the facility. The 3800 regulations also prohibit an agency from restraining a violent offender doing property damage in the community or in the facility. The same 3800 regulations also guarantee as a "RIGHT" home visits at least every two weeks to offenders regardless of their behavior, abuse issues, safety or progress in therapy. The 3800 regulations also prohibit the use of security measures such as door delay alarms to restrict offenders from leaving a facility. This final version of the 3800 regulations have gone from bad and costly to dangerous and costly. It was inevitable that the 3800 regulations would degenerate to this stage, by attempting to produce one set of regulations to govern violent offenders and non-self reliant individuals.

The 3800 regulations, if adopted, will pose a substantial threat to the community. I am requesting that you carefully review the regulations and refer the regulations back to the Independent Regulatory Commission and scheduled public hearings.

Very Truly Yours,

J. Merle Herr
Executive Director

RECEIVED
99 MAY 10 AM 11:15
INDEPENDENT REGULATORY REVIEW COMMISSION

MIDDLE EARTH, INC.
299 JACKSONVILLE RD.
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To whom it may concern,

I am faxing this letter to concerned parties, regarding the proposed 3800 regulations, which are about to be passed into legislation.

The 3800 regulations are an attempt by the Department of Welfare to regulate all agencies and facilities that deal with youth. The regulations take a global approach to the problems of youth and provide similar guarantees, requirements and standards regardless of whether the population served is delinquent, dependent, or MH/MR. This approach has led to set of regulations, which has basically dichotomized treatment and care. In response to the efforts of child advocacy groups that are primarily part of the MH/MR population, all non-secure treatment has been heavily restricted in its ability to maintain order, safety of clients and community safety. There is no option to prevent the clients from leaving a facility or damaging property. Similarly, a client is guaranteed the right to send unopened or unexamined mail freely. When working with delinquent or abusive clients, these guarantees pose a threat to the community and to the clients victims. A sex offender treatment program for example would need to be certain that a client was not sending mail to his victim.

Many programs working with delinquent youth have historically tried to provide the least restrictive setting, and have managed to do so by maintaining a staff secure environment. This means that although doors might be open, a program would not allow a client to leave a facility when he was enraged or perceived to be a threat to himself or the community. This option allowed programs to work with clients in the most effective, therapeutic and open environment possible, and still offered community protection. Under the 3800 regulations, a program would be less willing to take into treatment clients who might on occasion be out of control and require some method to prevent elopement or an episodic rage. Many client who are now in community based programs would be forced into secure programs simply as a result of the 3800 regulations. This of course would result in a significant increase in cost and would provide less effective treatment.

Once forcing a client into secure treatment, the 3800 regulations then assume that all clients in secure treatment require 24-hour supervision throughout their placement. The assumption of the regulations is that clients who are in secure treatment settings are a severe risk at all times. This is a basic fallacy. Treatment is a continuum, as clients progress through a program their security needs change. They make improvements. It becomes beneficial to begin to re-acclimate the client to the community in some manner and with increasing levels of trust. This is an important feature of rehabilitation, and does not present the problem of having a client

go from a secure setting where he has little or no community contact, to a non secure setting where he is free to roam without constraint. One component of the 3800 regulations requires that while being transported, a client must have at least one staff and a driver in the vehicle. This regulation would be so cost prohibitive that most programs would be forced to herd clients around in groups rather than use one to one approaches to community orientation. This provision is in effect regardless of the level of functioning that a client demonstrates. In effect, a client leaving secure placement to a non-secure setting would be driven from a secure facility by 2 staff. He would exit the vehicle to a program where no one could prevent him from walking away if he pleased, this sudden change would occur without any trial experiences while in the secure program. This approach totally ignores the realities of treatment and client training now in effect.

The regulations offer little in treatment options to programs as a method of inducing behavioral change in clients. I can find few approaches for reward or negative reinforcement that are allowable. Once a reward program is established, it almost automatically becomes a guaranteed right of the client. Certainly when working with recalcitrant, delinquent youth, we need more latitude in finding creative ways to induce change, not less. Otherwise it is unlikely that change will occur.

Middle Earth, Inc. provides sex-offender treatment, day-treatment, alternative education and foster care. We look at each program differently, as we are cognizant of the need to address populations based on their therapeutic and behavioral needs. In sex offender treatment, for instance, there is a need to restrict movement of youngsters within the program for many reason. Primarily, there is a high propensity for sexual acting out weather voluntary or coercive. Although the regulations demand that even consenting sexual activity be treated as a reportable incident, the are few options available to prevent such activity.

In addition to the problems I perceive with the 3800 from a treatment and common sense perspective, there exist significant cost increases with the regulations.

In our sex-offender treatment facility for example, the following changes would be necessary as a result of the 3800's.

1. Since all employees would require completion of training within the first 120 days, we would be required to offer all training programs 3 times a year this would cost an additional $700 annually.
2. The time limit for physical, dental and vision exams would not allow for proper managed care documents to be in place, and would result in out of pocket expenses for those initial services, at an additional cost of $4000.
3. The requirement for an onsite supervisor for every 16 clients would drastically alter our current policy of having supervisors on call during sleeping hours. The net cost difference for increased pay differentials and additional supervisors would be approximately $9500
4. The requirement of a driver in addition to a staff member would result in 3 additional full time staff at an approximate cost of $75,000.

These changes alone would result in a $10.50 perdiem increase. This cost increase would become effective on July 1, 1999 even though are budgets and contracts have already been approve without consideration of these increases.

In summation, I think that it is a counter productive effort to lump all juvenile service under one umbrella. They are frequently and necessarily distinct. The result would be less effect, humane and secure. In fact, I see

great difficulty for programs dealing with delinquents to abide by the BARJ principles while operating under these regulations. There will be a significant increase in community risk as a result.
I urge you to make every effort to see that the 3800 regulations are not enacted into law on July 1, 1999.

Sincerely yours,

Herk Marsella
Vice President
Middle Earth, Inc.

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Chairman
Majority Policy Committee

Senate of Pennsylvania

50TH DISTRICT
MERCER, CRAWFORD AND ERIE COUNTIES

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MEMBER LOCAL GOVERNMENT COMMISSION
STATE CHAIRMAN, AMERICAN LEGISLATIVE EXCHANGE COUNCIL

April 9, 1998

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Notebook

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

Dear Mr. Gioffre:

I would like to take this opportunity to reinforce the concerns officials at George Junior Republic have regarding recent regulations promulgated by the Department of Public Welfare on Child Residential and Day Treatment Facilities as published in the Pennsylvania Bulletin dated Saturday, February 14, 1998, Part IV.

George Junior Republic is located in Grove City, Mercer County and is a residential treatment facility for male children and adolescents serving all of Pennsylvania's County Probation Departments and Children and Youth Services Agencies. They have the capacity of approximately 450 youth, being one of the largest facilities in the Commonwealth.

Therefore, as the State Senator representing George Junior Republic, I respectfully request that the Department give careful consideration to the issues raised by George Junior officials.

Thank you for your interest and concern regarding this matter.

Sincerely,

Bob Robbins

Robert D. Robbins

RDR/mah

GEORGE JUNIOR REPUBLIC IN PENNSYLVANIA
P.O. BOX 1058 • GROVE CITY, PENNSYLVANIA 16127
TELEPHONE: 412-458-9330 • FAX 412-458-1559

PAT J. FARRONE
PRESIDENT AND CEO

GEORGE JUNIOR REPUBLIC
RESPONSE TO
CHILD RESIDENTIAL AND DAY TREATMENT FACILITIES REGULATIONS (3800)

We appreciate the opportunity to respond to the proposed regulations, Title 55, Part V, Subpart E, Chapter 3800, Child Residential and Day Treatment Facilities. We are recommending an adjustment of the following:

3800.16 Unusual Incidents - The language be changed to reflect the language of the current 3810 regulations. I believe this is overkill in terms of reporting. Our programs work with adolescents who engage in many physical and sports activities. Consequently, there are a number of minor injuries, which require attention, mostly x-rays to insure there is no fracture. Medical Staff reviewed our logs for the past month and found that we would have reported 246 unusual incidents with the proposed regulations. At this rate we would need to add a full-time staff at a cost of approximately $25,000 per year. We do not understand how the proposed reporting of incidental injuries affects health and safety, as it is reported after the fact.

3800.209 Chemical Restraints (c) & (d) It is ridiculous to require a licensed physician to examine a youth immediately prior to the administration of medication. The youth who are placed in our Psychiatric Units are moderate to severely emotionally disturbed and much more capable of harming themselves and others, than our open residential population. The Department of Public Welfare is attempting to dictate what and how a licensed Physician can practice, i.e. not allowing a telephone order, administered by other licensed medical staff (R.N.'s). The attending Physician has already completed a Mental Status Examination and is aware of the youth's medical condition.

We request the requirement of the physician examining all youth prior to the administration of a drug on an emergency basis be deleted.

3800.56(d) Supervision - This regulation was changed to facilitate the needs of agencies that serve the Children and Youth Services population, while discriminating against the delinquent population. I respectfully request that the language of this regulation be changed back to the language of the Draft Regulations dated 7/17/97. We employ married couples with families living in and working with delinquent youth. Our model does not have awake staff at night in some of our small group homes. Youth who have been at our organization for some time and demonstrates appropriate responsibility and behavior and do not pose a risk are monitored by a roving staff. We have used this staffing model successfully for over twenty-three years (23) with no major health or safety problems for our youth, staff or the community.

The George Junior Republic has a "Continuum" of residential services in which there are awake night staff where necessary. All new admissions are monitored by awake night staff. As youth progress and demonstrate they are a minimal risk, the youth are transferred to an "on campus group home" where we do not have awake staff at night, but do have roving staff. Since we are treating these youth as normal people and they will be returning to their homes in a few months, we feel our excellent treatment results need this normalization process. We have had little, if any, community problems and no danger to our own campus community. We believe that staffing should be based on the needs of the specific population.

We have analyzed our absconders over the past year to find that youth residing in our homes with awake night staff have absconded at a rate of 2 ½ to 1 compared to our homes with no awake staff. Therefore, we believe our request would pose no greater risk to the community.

Additionally, if this regulation is applied as written, we need to add 24 staff positions at a cost of $368,160.00. This will cost the placing agencies $2.62 per day for each youth 365 days per year.

MATTHEW N. WRIGHT, MEMBER
PA HOUSE OF REPRESENTATIVES
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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RECYCLING FUND ADVISORY COMMITTEE

October 26, 1998

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Honorable Feather O. Houstoun
Room 333 Health and Welfare Building
P. O. Box 2675
Harrisburg, PA 17105

Dear Secretary Houstoun:

I am writing to you regarding proposed regulation #14-422 - Child Residential and Day Treatment Facilities. It is my understanding that, following the required comment period, this proposal was returned to your department with a number of suggestions for revisions. In addition to the input that you had received, I would appreciate your consideration of the following comments as you formulate a final proposal for resubmission to the legislature.

My constituents who operate the Woods Service in Langhorne, PA, have expressed to me their concern that regulation #14-422 proposes to raise the minimum age at which employees can work in the various types of children's services which would be covered by this proposal. The requirement for child care workers counted in the child ratio to be at least 21 years of age is extremely problematic to those children's service providers, such as Woods Service, who rely on college age students to assist in meeting necessary staffing needs. As a private nonprofit facility, Woods Service prides itself in ensuring the provision of quality, affordable services with approximately 1,500 dedicated and well-trained employees. Many of their employees work while attending school and have, therefore, a genuine interest in applying the skills they are learning through hands-on application and real-life experience. I cannot think of a better opportunity to create a solid basis for a professional, committed workforce in specialized care for children.

While I certainly agree with a desire for consistency across regulations, I am also a great believer in the old adage, "If it isn't broken, why fix it". As such, I would appreciate knowing what the motivation for changing the age requirement is. The Ridge Administration's intent to streamline regulations and to set a baseline of quality assurance is commendable, however, it would be helpful for me to understand how this age requirement proposal will help to achieve those goals. I urge you to strongly consider that Pennsylvania's private provider system of services to children is the largest in the country, with the longest history of serving children with special needs. We must be careful, therefore, to not totally abandon current thinking that has been shown effective in an effort to achieve "state-of-art" practices that have yet to be tested in Pennsylvania.

Thank you for your consideration of my comments. I look forward to your response to my request.

Sincerely,

Matt

Matt Wright
State Representative

cc: Robert Nyce, Executive Director, IRRC ✓
Robert Griffith, President, Woods Services

A DIVISION OF CORNELL CORRECTIONS, INC.

March 13, 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
Chs. 3680, 3710, 3760, 3800, 3810, 5310 and 6400
Child Residential and Day Treatment Facilities

Dear Mr. Gioffre:

On behalf of Abraxas Group, Inc., I want to express our appreciation for the opportunity to participate in the process of revising the reference regulations. The Department has obviously worked hard to facilitate an open, honest, inclusive, productive and proactive process.

Art Meissner, Abraxas' Director of Quality Assurance and Regulatory Compliance, and our representative to the rulemaking work group, said it was a real pleasure working with both the Department and other providers on these important regulations.

Art indicated that during the revision process, the Department's goals were very clearly articulated to the work group participants. The charge was to suggest revisions to the regulations that would help consolidate the current array of "program specific" regulations into one set of comprehensive health and safety regulations applicable to the diverse spectrum of Pennsylvania children and youth programs. We have therefore solicited input from all of our senior managers and Pennsylvania program directors, and have compiled their responses in the enclosed written response to the proposed rulemaking.

Again, thank you for the opportunity to make public comment about the proposed rulemaking. Please let me know if you would like additional information or clarification about any of our responses.

Sincerely,

Thomas R. Jenkins
Senior Vice President

/jav

Enclosure: as stated

cc: Arlene Lissner
Art Meissner

Abraxas
One Gateway Center, Fifth Floor
Pittsburgh, Pennsylvania 15222
412-208-4000 Fax 412-208-4001
800-227-2927

Introduction

Since its inception in 1973, Abraxas has provided alcohol and other drug treatment and related services to adjudicated dependent and/or delinquent youth referred through the Commonwealth's juvenile court and children and youth systems. Abraxas provides a broad range of open and secure adolescent services, including residential, outpatient, community-based, wraparound and day treatment. All residential programs in Pennsylvania are currently licensed by the Department of Public Welfare, Office of Children, Youth and Families (DPW/OCYF). Four of our residential programs are also licensed by the Department of Health, Division of Drug and Alcohol Program Licensing (DOH/DDAPL). Our Outpatient Mental Health Clinic, located in Harrisburg, is licensed by DPW/Office of Mental Health and Substance Abuse Services (OMHSAS). Our "flagship," and our oldest and largest program, Abraxas I, has been accredited by Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) since 1994.

Comments

3800.2 Applicability

(g) This chapter does not apply to the following...
(9) Drug and alcohol residential facilities who provide care to children, that are licensed under 28 Pa. Code Ch. 701, 704 and 709 (relating to general provisions, staffing requirement for drug and alcohol treatment facilities and standards for licensure of free-standing treatment facilities.)

If the regulations are promulgated as currently written, many adolescent service providers will be forced to choose between DPW/OCYF and DOH/DDAPL licensure. We do not believe it is good public policy to force providers to choose between the protections currently afforded to the Commonwealth's children and youth under the DPW/OCYF licensure and funding streams only accessible by DOH/DDAPL licensure.

All youth served by Abraxas are referred by the Commonwealth's juvenile court system, and our agency has a long-standing reputation with the county courts as a provider of not only high quality drug and alcohol treatment, but other, related services for adjudicated delinquent/dependent youth. We view the county courts as not only our "customer" but also our partner in providing effective treatment for youth.

If programs like Abraxas are forced to choose between DPW and DOH licensure and chooses DPW licensure, the program will be prohibited by DOH regulations from providing drug and alcohol treatment services. The consequence of this would be reduced drug and alcohol services for delinquent/dependent youth and reduced access to drug and alcohol funding streams, which programs use to reduce treatment costs to counties.

We are seriously concerned that, if the regulations are promulgated as currently written, delinquent/dependent children receiving alcohol and other drug services will be without OCYF protections. Given the goals of the cross-systems licensing project, we are concerned that the Department of Health chose not to participate in this process, particularly since, as is evident above, the 28 Pa. Code 701, 704 and 709 licensing regulations do not specifically address the health and safety needs of children, as distinct from adults.

We are therefore submitting for the Department's consideration the following observations regarding the limitations of current DOH regulations relative to children's' health and safety needs:

- DDAPL regulations exist primarily to ensure that Pennsylvania drug and alcohol programs provide drug and alcohol "treatment services". They do not distinguish the unique health and safety needs of children from those of adults.

- DDAPL regulations ensure only that drug and alcohol treatment "staff" (program directors, clinical supervisors and counselors) meet the credentialing or educational requirements stipulated by Pa. Code 28.701 staffing regulations. They do not address qualifications for direct child care workers who do not provide drug and alcohol "treatment" services.

- DDAPL regulations do not specify requirements for new employee orientation, e.g., content of such trainings; hours of training required before assuming unsupervised direct care responsibilities; crisis intervention techniques; CPR/first aid, etc.

- DDAPL regulations regarding annual training hours for staff are specific to drug and alcohol training. DOH does not require "child care" related training, or annual crisis intervention or CPR/first aid refresher courses.

- DDAPL regulations provide only for drug and alcohol clinical supervisor/counselor and counselor/client ratios. They do not provide staff/client ratios for "direct care" staff or stipulate ratios for staff/client ratios during sleeping hours or "non-drug treatment" time.

- DDAPL regulations do not require that the placing agency, i.e., county courts, be involved in the development of (or even receive a copy of) the treatment plan.

- DDAPL regulations do not address the following 3800 health and safety issues:
  - Child discipline guidelines and requirements, e.g., use of mechanical restraints, safe physical management, chemical restraint, isolation
  - Visiting and communication
  - Dental/eye care, immunizations
  - Education
  - Transportation
  - Separation of clients by age, gender or legal status (thus allowing coed and adult/child mixes)

- DOH is currently revising their life safety and physical plant regulations. However, very few of the current regulations address such issues (e.g. minimum sq. ft. for sleeping rooms, maximum number of clients to a room, general space requirements, etc.)

Because of the aforementioned concerns, Abraxas recommends the following alternative: Grant dual-licensed (DPW/DOH) programs a waiver to the "Applicability" restrictions, thereby continuing current OCYF protections to children in care, and allowing counties (and providers) continued access to vital funding streams, e.g., reimbursement for drug and alcohol treatment.

3800.271 - 3800.273 Secure care

3800.271. Criteria Secure care is permitted only for children who are court ordered to a secure facility:

Abraxas would like to take this opportunity to address the issue of the placement of Pennsylvania youth in secure settings. Currently, youth in such settings are ineligible for Medical Assistance benefits and do not have access to medically necessary behavioral health services. Officials within the Department and county children and youth systems have acknowledged that over 700 Pennsylvania youth are currently in out-of-state placements because M.A.-reimbursable "specialized" behavioral health care is not available in Pennsylvania.

The real cost of this failure to provide in-state options in providing secure care and treatment of Pennsylvania youth is significant, and the policy violates the Department's philosophy of providing the supports necessary to maintain children close to, or in, their own homes. While the immediate fiscal issues are obvious, there are many "less tangible" consequences of such a policy. Families lose the ability to be involved in the programs care and treatment of their children, which creates transition issues for the child upon returning home. Further disintegration of families is possible, thereby creating future social costs through continued utilization of the welfare and criminal justice systems. The policy also leaves the impression that Pennsylvania does not care for its own children at home.

Abraxas recommends that the Commonwealth, through the Pennsylvania Department of Welfare, seriously evaluate this failure to provide for in-state, medically necessary services for some its most troubled at-risk youth. Many Pennsylvania providers have the capability of, and interest in, providing such highly specialized services, but the Commonwealth currently lacks a mechanism for funding these intensive services.

3800.53 Director

(c) A director of a facility shall have one of the following: 1) A master's degree from an accredited college or university and 2 years work experience in administration or human services. 2) A bachelor's degree from an accredited college or university and 4 years work experience in administration or human service.

Currently, many adolescent service agencies have program directors with many years of experience in administering child care programs, but no formal academic degree. Under the new regulations these experienced professionals would not qualify as Directors, and agencies would lose the benefit of their invaluable experience. We emphatically recommend that current Directors be "grandfathered" into their current positions, and that they be enabled to maintain this status if they transfer to another Directorship within the agency.

3800.54. Child care supervisor

(d) The child care supervisor shall have one of the following: 1) a bachelor's degree from an accredited college or university and 1 year work experience with children 2) an associates degree or 60 credit hours from an accredited college or university and 3 years work experience with children.

Currently many adolescent service agencies have child care supervisors with many years of experience. The proposed rulemaking would not allow these experienced professionals to maintain their supervisory roles. We emphatically recommend that these individuals be "grandfathered" into their current positions and that they be permitted to maintain their status if they transfer within the agency. Alternately, 3800.54(d)(2) could be revised to include "an Associate's degree or 60 credits from an accredited college or university or 3 years work experience with children."

3800.188 Medication administration training

(a) A staff person who has completed and passed a Department-approved medications administration course within the past 2 years is permitted to administer oral, topical and eye and ear drop prescription medications and epinephrine injections for insect bites.

We recommend that the Department identify the content of a "Departmental approved medications administration" curriculum/training and specify the approval process. We also recommend that to maximize the availability of approved training and ensure that timely training occurs for program staff, the Department approve or develop a "train the trainers" curriculum. Such an approach would allow programs to have certified medication

administration trainers on site whose credentials are recognized by the Department and licensing staff.

3800.202 Appropriate use of behavior intervention procedures

(b) A behavior intervention procedure, with the exception of exclusion as specified in 3800.212 (relating to exclusion) may be used only to prevent a child from injuring himself.

Recommend that behavior interventions procedures be deemed appropriate for situations in which the child may harm others or destroy property.

(c)(3) A behavior intervention procedure shall be discontinued when the child demonstrates he has regained self-control.

Recommend addendum to "when the child demonstrates he has regained self-control" to add **"and has verbalized a commitment to maintain control."**

3800.204 Unanticipated use

If behavior intervention procedures are used on an unanticipated basis 3800.203 (relating to behavior intervention procedure plan) does not apply until after a behavior intervention procedure is used four times for the same child in any 3-month period.

Requiring a behavior intervention plan, in addition to the Individual Service Plan (ISP), after the fourth intervention in a three month period is redundant and does nothing to enhance the health and safety needs of children. If a youth demonstrates a chronic pattern of acting out or incapacity to control his/her behavior, the program has a responsibility to identify appropriate interventions within the ISP and monitor progress accordingly.

For programs that serve delinquent children, a component of the treatment of these youth is to teach new skills and assist them to manage and control their aggressive behavior. This regulation does not consider the youth who may demonstrate unforseen or spontaneous acting out behavior. When staff use "physical" behavior management techniques, it is only after all other crisis intervention (de-escalation) techniques have been attempted and have failed.

Finally, most programs have policies that prohibit the use of chemical restraints (3800.209); mechanical restraints (3800.210) and exclusion (3800.212), leaving staff with only verbal or physical behavior management techniques as options for keeping youth, staff and property safe from harm. If programs are overly constrained in the use of such techniques, programs which have been capable of managing aggressive youth may consider not accepting such youth, discharging them, or referring them to a more intensive and expensive level of care, e.g. secure or psychiatric care.

3800.211 Manual restraints

As proposed, the regulations differ from the Safe Physical Management (SPM) crisis intervention techniques used by the Commonwealth and endorsed by the Department for use in its own secure youth facilities. As a program that serves delinquent youth and also uses SPM techniques, we strongly recommend that the proposed rulemaking be congruent with the requirements of SPM.

Alternately, we suggest the following revisions since for the reasons delineated below, the proposed regulations would be both costly and counterproductive to the safety and welfare of children in care:

(d) The position of the manual restraint or the staff person applying a manual restraint, shall be changed at least every 10-consecutive minutes of applying the manual restraint.

It is recommended that the requirement for "switching" position or staff during restraints be eliminated. Experienced program staff who train the Department-endorsed SPM techniques have expressed concern that this requirement could subject youth to more stress than is necessary. Every time staff switch positions or places during a manual restraint, it increases the risk of injury to the youth. If the switch is not conducted properly, it also exposes staff to potential injury. Alternatively, it is recommended that the regulations include language allowing staff involved in restraints the option not to change positions if to do so is deemed unwise or unsafe.

(e) A staff person who is not applying the restraint shall complete observation and documentation of the physical and emotional condition of the child, at least every 10 minutes the manual restraint is applied.

In most "manual restraint" situations, requiring an additional, uninvolved staff person to "observe and document" is an unrealistic and impractical requirement, and one that may lead to unsafe conditions within a program. As the Department knows, some manual restraints require the time and attention of three to four staff. The requirement that an additional staff person "observe and document," has the potential to reduce supervision of other youth. Staffing patterns are such that programs cannot ensure there will be staff available to serve as observers and documenters. Neither is "observing and documenting" the most effective use of a staff member's time in such crisis situations. Finally, such a requirement will inevitably increase the costs of providing services to youth, as programs would be required to institute staffing patterns that would ensure that adequate staff are available to handle documentation/observation requirements as well as the physical requirements of the restraint. Though such physical interventions are not always predictable, the staffing requirement would be a constant.

It is therefore recommended that the requirement for non-participating staff observers/documenters be eliminated, as such a requirement may be impractical in a crisis situation where the staffing pattern is inadequate to allow for a non-involved staff member to document while others work to de-escalate the crisis.

We further recommend that the requirement to document be revised to allow documentation to immediately follow, rather than occur during, the restraint because 1) programs often need all available staff to safely manage manual restraint situations and 2) safety/security considerations may preclude staff from meeting the "every 10 minutes" documentation requirement.

(34)

Adelphoi Village

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March 13, 1998

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

Dear Mr. Gioffre:

Attached are comments and suggestions concerning the draft of CHAPTER 3800 requirements for CHILD RESIDENTIAL AND DAY TREATMENT FACILITIES. Adelphoi Village commends your efforts to consolidate the licensing of programs that service children in need. In reviewing the draft, my agency does support the exclusion of facilities that provide specialized drug and alcohol related treatment.

In preparing the agency's comments, I categorized our recommendations in relation to the specific facility in which the regulations pertain. My goal was to ensure that the suggestions were easily comprehended by your department.

If you have any questions concerning these comments, please feel free to contact me. Thank you for the opportunity for the period of public comment in relation to the draft regulations.

Sincerely,

Kip Cherry

Kip Cherry, M.S.
Associate Director

KC/mk

Enclosures

RESPONSE TO THE DRAFT 3800 REGULATIONS PERTAINING TO DAY TREATMENT FACILITIES

3800.16 and 3800.17 UNUSUAL INCIDENTS and INCIDENT RECORD: In relation to unusual incident reports and incident record, Day Treatments are non residential treatment programs that include both adjudicated and non-adjudicated youth. Though reasons for placement in a Day Treatment program vary between clients, it is common that treatment issues will focus on truancy from the public school system. It would be realistic to state that many youths fail to attend a Day Treatment during their initial adjustment period that mirrors the behavior that may have resulted in their involvement in the program in the first place. These requirements would result in agencies consistently completing the unusual incident reports and forwarding them to the Department of Public Welfare.

SUGGESTION: Adelphoi Village would recommend that Day Treatment facilities be exempt from this requirement.

3800.102(f) BATHROOM; "there shall be at least one wall mirror for every six children": This is a minor issue and I am not sure what the relevancy would be in relation to a Day Treatment setting. Day Treatments are exempt in all areas relating to flush toilets, sinks, showers, etc.

SUGGESTION: Adelphoi Village would recommend that Day Treatments are exempt from this requirement.

3800.132(e) FIRE SAFETY; "a fire drill shall be held during sleeping hours at least every six months": Since Day Treatments are not residential programs, this regulation is not relevant for Day Treatment facilities.

SUGGESTION: Adelphoi Village would recommend that Day Treatments are exempt from this requirement.

3800.143 CHILD PHYSICAL EXAMINATIONS: Since the Day Treatment programs are non-residential, the parent/guardian is still the main caretaker of each child in the program. This issue would place a burden on the county placement agency and/or agency staff.

SUGGESTION: Since the Day Treatments are exempt from 3800.144 (DENTAL CARE), Adelphoi Village recommends that Day Treatment facilities are also exempt from the requirement involving child physical examinations. The agency supports utilizing a health screen process that would identify any physical needs of the child. If the child is in need of medical attention, agency

personnel would put forth an effort by networking with the parent/guardian and/or the county placement agency to secure an appointment.

3800.241(4) CHILD'S RECORDS; "a copy of the child's most recent annual physical examination": Many children who are placed in a Day Treatment facility are experiencing their first treatment program and they remain in the home setting with their parent/guardian as the main caretaker. This requirement would delay admittance of a child in need of a Day Treatment facility since previous physical examinations would have been the responsibility of the parent/guardian.

SUGGESTION: Adelphoi Village recommends that Day Treatment facilities be exempt from this requirement. A health screening process would allow a child's physical health needs to be assessed. This exemption would support the exemption as stated previously in relation of 3800.143 CHILD PHYSICAL EXAMINATIONS.

3800.256(a) DISHWASHING; "utensils used for eating, drinking...shall be washed, rinsed, and sanitized after each use by a mechanical dishwasher or a method approved by the Department of Agriculture": I would assess that since many Day Treatment facilities are non-residential, food is purchased from out side resources and served on disposable plates, utensils, etc. thus this requirement would not be effective for Day Treatments.

SUGGESTION: Adelphoi Village recommends that Day Treatments are exempt from this requirement.

3800.163 FOOD GROUPS: This is an important regulation for Day Treatment facilities and one Adelphoi Village Supports, but we do add the following:

SUGGESTION: Adelphoi Village recommends requiring a second choice be offered i.e., peanut butter and/or jelly sandwiches. This would allow accommodation to clients that must adhere to religious beliefs and/or dietary choices (vegetarians).

RESPONSE TO THE DRAFT CHAPTER 3800 REGULATIONS PERTAINING TO SECURE DETENTION

3800.283(1) ADDITIONAL REQUIREMENTS; "no more than one child may occupy a bedroom": This issue will result in the need of waivers from many secure detention centers across the state. Several Detention facilities do no have separate sleeping quarters for each child detained. It appears that this regulation is intended to support the new facilities that we built in the last couple of years. This regulation would result in a financial hard ship for various counties that may wish to build a detention center or expand an existing detention facility.

SUGGESTION: Adelphoi Village recommends that Secure Detention facilities be allowed to have a maximum of two children per bedroom. This would be congruent with the requirements for secure care.

3800.144 DENTAL CARE: Secure Detention facilities admit numerous children during any twelve month period due to the short duration of each child's detainment. It would be difficult for a facility to obtain this information.

SUGGESTION: Adelphoi Village recommends that Secure Detention facilities be exempt from this requirement.

3800.273(12-1) ADDITIONAL REQUIREMENTS; "furnishings or other items such as drapery cords, electrical outlets, shower curtains, show strings...that may create a risk for self-injury or suicide may not be accessible to the children.": This is a difficult requirement in that it is ambiguous and allows for varying interpretation. Issues would include fans that are utilized in the summer time to keep children cool, electrical cords for televisions and video cassette recorders, and even shower curtains just to name a few.

SUGGESTION: Adelphoi Village recommends that this requirement be reviewed and re-examined as to the intent. It is recommended that youth be in constant supervision that would prevent the misuse of furnishing or other items such as drapery cords, etc. Adelphoi Village would recommend the deletion of "shower curtains" as part of this requirement.

RESPONSE TO THE DRAFT 3800 REGULATIONS PERTAINING TO CHILD RESIDENTIAL FACILITIES

3800.106(a) WATER AREAS: The requirement to have lakes be surrounded by a fence with a gate may be unrealistic due to immense cost of installing a fence around a natural body of water.

SUGGESTION: Adelphoi Village recommends the deletion of the term "lakes" in relation to the requirement of a perimeter fence and gate. It is assessed that with the requirement of a lifeguard being present with the children at all times children are using the water areas (3800.106c), the safety of children placed at the facility is supported in relation to natural bodies of water on the premises.

For further discussion or clarification on these comments and suggestions, please contact Kip Cherry, Associate Director @ (724) 520-1111 or you may send e-mail to: kipc@adelphoivillage.org

CATHOLIC CHARITIES

EXECUTIVE DIRECTOR
REV. MSGR. FRANCIS M. KUMONTIS MSW, MBA

PARADISE SCHOOL: R.D. #1 / BOX 341 / ABBOTTSTOWN, PA 17301 / TELEPHONE (717) 259-9537 / FAX (717) 259-9262

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

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3/9/98

Dear Bob,

Greetings from the southern frontier ! Please consider the following as our response or public comment regarding the proposed 3800 regs.

- 3810.54- child care supervisor. Perhaps this could be expanded to include non degree staff persons with eight to ten years of experience. Every facility I am aware of has a core of a few people that are tremendously capable and experienced if not credentialed .Keep in mind that this is after hours and on weekends. If we entrust these folks with the responsibilities, shouldn't we be able to publicly acknowledge doing so?
- 3800.57- staff training. All staff including Director responsible for forty hours per year. Reasonable. My question is that if a staff person conducts the training, do they get the same credit for the training as those who attend ? Doesn't the person presenting do considerably more work than the person attending?
- 3800.151- Staff Health Statement- Updating the requirement of statements of being free from communicable diseases appears to be a throwback to the regulations preceding the 3810regs (3680). I am not sure if an employee is obliged to share his/her HIV status with us regardless of our request to do so. I would think that if an employee had a satisfactory work record and lasted for two full years in a professional capacity that they would be ethically obliged or disposed to share any health concerns with us independent of the regulations. If we have staff who are not cognizant of their responsibilities in this area after two years of employment we have much bigger programmatic issues than non-compliance with this regulation. I would recommend that this be dropped. If all programs adopted the universal precautions from the OSHA Standards we would significantly reduce this risk factor as well as the more

probable risk associated with communicable diseases being transmitted from client to staff from an open wound.

- Gated Ponds- Our facility is located on a three hundred acre plot of land. Over two hundred acres is contractually "farmed out" maintaining an aesthetic tradition for the past eighty-seven years. We are working on a plan that might create a pond/wetland on a plot of land owned by the Diocese but separate from the plot where the main building is located. In other words, the pond (if built) would be amidst the farmland. Do we need a fence for that?
- 3800.188- Medication Administration training & Behavioral Intervention training. Just an opinion, and with no disrespect intended, I believe that it is a bad move for the Dept. to get into the business of approving and disapproving training programs. When you do this your status changes from a regulatory function to a accrediting function. Every new and approved vendor of crisis prevention techniques and guru will be lobbying your office to get on the list of approved providers. This in my opinion is reasonable for newly licensed programs or programs operating on a provisional license but not for programs with licensed physicians on their staff even in a consultative arrangement. I believe that everyone's concern with doing the right thing and anxiety of the liability associated with not doing so has dramatically upgraded our performance in these areas. I haven't talked to anyone in the Central Region Dept. that is looking forward to broadening the scope or purview of their responsibilities in these areas.

I believe that covers the major concerns. I wish you luck with this arduous task and I thank you for the opportunity to give feedback.

Sincerely,

Mike

Michael Langley
Program Director

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FORM LETTER #5 21

March 21, 1998

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

Dear Mr. Gioffre:

As the parent of a child who has special needs, I feel it is important to give you my input on the proposed 3800 Regulations.

Beyond what the regulations cover, you need to address areas such as the requirements for the therapists who will treat the children and how you will include the families of the children in therapy and treatment, the times when the parents must be notified of things, not just the agency who arranged for the child to be in a program and what kinds of checks your department will do to make sure that programs are running the way they say they will.

There are a great number of things that I think your regulations should cover that they do not. I believe that most service agencies will do nothing more than the basics if you don't put those things into your regulations and have a way of monitoring them.

Please, to protect all of our children who need these services, make these regulations force good services or not allow people who will do a poor job get a license.

Thank you,

Pamela Kay Kelly
Parent

Telephone No: (717) 732 5658
County: Cumberland

GAUDENZIA, Inc. 106 W. Main Street, Norristown, PA 19401 (610) 239-9600
FAX: (610) 239-9195
A United Way Donor Option Agency

Robert P. Kelly
Chairman of the Board

Michael Harle, M.H.S.
President/Executive Director

Michael Bayison
Counsel

March 16, 1998

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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 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 do not hesitate to contact me if you have any questions regarding my input.

Sincerely,

Michael Harle
President/Executive Director

MH:mg

Lakeside Youth Service

P.O. Box 127
Fort Washington, PA 19034
(215) 654-9414
FAX: 215-654-9523

February 23, 1998

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

Dear Mr. Gioffre:

I am in receipt of a draft for Proposed Rule Making dated 10/16/97, having to do with 55 PA Code, Chapter 3810.

In reviewing this document, one of the items that I would like to raise an issue on is that of paragraph 3810.106. *Water Areas.* As stated in Section (a). *"Above-ground pools, in-ground outdoor pools, ponds and lakes located on the premises shall be fenced with a gate that is locked when the water area is not in use".* I believe that a general provision such as this does not take into account several factors that have a negative impact upon organizations such as our own that operate on rather large campuses.

Our facility for day treatment is presently headquartered on a forty acre property which contains several buildings, a three and one half acre lake, together with a swimming pool. Over the years, our swimming pool has been securely fenced and locked at all times when not in use, however, our lake, which is in a very natural setting because of its size, is utilized not only by our staff and clients but also by our community in that it is open by permit for fishing and other recreational activities.

If we were to abide by the regulation as promulgated, not only would there be an undue expense in fencing a three and one half acre lake which runs contiguous with a wooded area, but in doing so, it would preclude the community from actively utilizing our facilities after normal day treatment hours. Suppose the lake was ten acres or twenty acres, would the same regulation still prevail?

I believe that the negative impact environmentally and recreationally that would come about by the passage of such regulation far exceeds any dangers that would be evident by the continuation of keeping this lake open.

I would strongly urge a review of this regulation and its impact upon youth facilities throughout the state that may be in the same position as Lakeside Youth Service. Thank you for your consideration.

Sincerely,

James N. Kirkner
Vice President/Administration

JNK/car

cc: Senator Stewart Greenleaf
27 N. York Rd.
Willow Grove, PA 19090-3417

PA State Rep. Eugene McGill
1841 Norristown Road - P. O. Box 3283
Maple Glen, PA 19002

National Headquarters
5300 KidsPeace Drive
Orefield, PA 18069-9101

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(36)

KidsPeace
The National Center for Kids in Crisis

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March 12, 1998

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

Dear Mr. Gioffre:

KidsPeace appreciates the opportunity to comment on the proposed rule making for Child Residential and Day Treatment Facilities. Here are our comments and recommendations:

1. § 3800.16 Unusual Incidents, page 962

Comments:

- The scope and definitions of the events requiring an incident report will result in very high numbers of reports. This can glut the department with data that may not contribute to improving child safety.

<u>These definitions need clarity</u>:

- What is the definition of an "action taken to commit suicide." Does this include ideation and gesture?
- Do the proposed rules include abuse or misuse of a child's property by another child?
- Clarify definition of "intimate sexual contact between children:" Will this include non-penetrating behavior that is considered within normal developmental limits?

- Since we will need to continue to utilize an internal incident reporting system, this will create additional paper work and require additional administrative time to review reports.

- The requirement to conduct a written investigation of all of these incidents will increase paper work and administrative time. This policy will require the written investigation of both important and less important events.

- We have been instructed by DPW not to initiate internal investigations under some circumstances, for example, allegations of improper sexual contact. This instruction is contradicted by the proposed policy.

Recommendations:

- Consider a monthly or quarterly reporting of non-critical incidents rather than a 24-hour reporting requirement for all incidents.

- Consider a set of reporting and written investigation guidelines for high priority incidents.

2. § 3800.17 Incident record, page 962

Comment:

- The incident record includes a different list of events. Is this purposeful? For example, it includes records of medication errors, seizures, property damage of more than $500. This will require separate tracking documents and may lead to confusion.

3. § 3800.132 Fire drills, page 967

b) Fire drills shall be held during normal staffing conditions and not when additional staff persons are present.

e) A fire drill shall be held during sleeping hours at least every 6 months.

Comments:

- Conducting fire drills during sleeping hours every six months: This means the disruption of sleep patterns. This is very hard on young people with serious emotional disturbances. The results can extend into the following day.
- Also, since night staffing patterns are at a lower ratio, this will place kids at risk due to low levels of staff. The level of staffing for children who are asleep is significantly different from the needs of active, awake children involved in an activity.

Recommendation:

- Consider a system of fire drills that can ready the facility in terms of fire safety, but that minimizes disruption.

4. § 3800.141 Child health and safety assessment, page 967

Comments:

- In day and community-based programs, can the health assessment be covered by a self-report form? The training of non-medical personnel to conduct a health assessment is a concern in terms of liability and in terms of additional training time.

Recommendation:

- In day and community-based programs, consider the use of a self-report for the initial screening instrument.

5. § 3800.143 Child physical examination, page 967

Comment:

- The physical examination is often not under the control of day and community-based program providers. The provider, for example, may need to rely on the school to provide the report of the examination.

Recommendation:

- In day and community-based programs, consider a less stringent requirement for obtaining a physical examination.

6. § 3800.171 Safe transportation, page 968

Comments:

- Will child restraints be required in school buses? (This question refers to the type of large buses used by public schools.)

- We currently hire 19-20 year-old college students as summer aides. The requirement for 21 year old staff would impact our hiring patterns.

7. § 3800.202 Appropriate use of behavior intervention procedures, page 970: The regulation requires that a staff person who is not applying the restraint shall complete observation and documentation every 10 minutes

Comment:

- There are situations when two person coverage on a physical holding situation will not allow adequate coverage of the other children.

8. § 3800.211 Manual Restraints, page 971: The regulation requires that the position of the manual restraint shall be changed every ten minutes.

Comment:

- We have a carefully developed approach to manual restraints. The approach is designed to protect the child from injury. If we change position we are moving to a hold that is less than optimal in providing protection for the child. The requirement to change should be based on the child's need for safety and well being, not a specific time frame.

Recommendation:

- Eliminate the requirement to change positions. Require that the position be assessed every ten minutes to insure the safety of the child.

9. § 3800.203 Behavior intervention procedure plan

Comment:

- This will significantly increase the amount of staff time spent in paperwork and plan development and coordination.

10. § 3800.32 Specific rights, page 963: A child shall have the opportunity to visit with family at least every two weeks.

Comment:

- It is sometimes beneficial to the child for parental visits to be limited at certain times during treatment.

Recommendation:

- Allow flexibility for a treatment plan which incorporates adequate parental contact and is consistent with the child's treatment needs.

11. § 3800.54 Child care supervisor, page 963:

Comment:
- The regulations make no provisions for current supervisors who do not have the required college degree.

Recommendation:
- Include a grandfather clause for those non-degreed supervisors who can demonstrate competency.

12. § 3800.55 Child care worker, page 963: Staff included in the staff child-ratio shall be 21 years or older.

Comment:
- We hire summer staff and part-time relief staff who are younger than this and they are included in the staff-child ratio. This would impact on recruitment and our costs for hiring staff.

13. § 3800.57 Staff training, page 964: First aid training is conducted annually.

Comment:
- National Safety Council guidelines require training every three years. Is this increase in stringency necessary and functional?

14. Changes in staff qualifications, page 957: The changes in the regulations lower the level of requirements for staff.

Comment:
- This seems contradictory to the intent of the policy to increase quality of care. It also seems contradictory in that the proposed regulations place additional expectations on staff.

Recommendation:
- Reconsider the reduction in staff requirements, since the current movement in the field is to upgrade the professionalism of child care.

We appreciate your consideration of these comments and recommendations. Please do not hesitate to contact me if you would like further comments or clarification.

Sincerely,

Richard R. Biolsi, ACSW
Executive Vice President

Juvenile Law Center

801 Arch Street, Sixth Floor, Philadelphia, PA 19107 (215) 625-0551 • in PA: (800) 875-8887 • FAX: (215) 625-9589 • Internet HN2003@[illegible].org

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April 14, 1998

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

By overnight and first class mail

Dear Bob:

The following are Juvenile Law Center's comments on the Department's proposed 3800 regulations. Because we believe that they will be harmful to children, we urge that they not be published as proposed.

Our comments are joined by Philadelphia Citizens for Children and Youth, Pennsylvania Partnerships for Children, Support Center for Child Advocates, and Education Law Center.

We recognize that the Department has undertaken a laborious process, and that there are many fine elements to the proposed regulations. These include enhanced staff training requirements and limitations on behavioral intervention techniques. JLC certainly supports those efforts.

However, the proposed regulations are problematic for several reasons. First, they are being proposed for reasons that are fundamentally flawed. Second, many are harmful to children in their details. Third, they apply to many facilities for which more detailed regulations are necessary.

1. **The regulations are proposed for reasons that are fundamentally flawed**.

We appreciate the need for consistency across regulations, and in general have no disagreement with DPW seeking to create uniform definitions and practices whenever feasible. We also agree that it would be helpful in many instances for programs with multiple licenses to avoid duplicative and inconsistent compliance monitoring processes.

Those values, however, should not trump children's well-being. We reject the view that regulations of children's programs should do no more than require the minimum necessary for children's health and safety. (Indeed, in some areas, such as health care covered by the Scott settlement, the Department is

required to do much more.) Instead of setting a baseline of quality assurance, these regulations are little more than a vehicle for disaster control.

Regulations have the force of law. They are tied to funding under needs-based budgeting. They ensure that quality programs are maintained in every county in the Commonwealth. They give parents and advocates for children and families legal recourse to argue for quality of care and family involvement. The current set of regulations has the virtue of having guided practice for many years-- providers have adapted their budgets, hiring, program, practices and training to their requirements. While abandoning bad regulations would be useful no matter how long they have been in effect, it makes little sense to jettison salutary regulations to which children's services long ago adjusted.

It is unduly optimistic for DPW to believe that its regulations, which have long protected the health and welfare of the state's children, can be replaced by county contracts, training, and voluntary accreditation. This is devolution at its worst.

County contracts would allow every county to establish different safeguards for children. Ironically, since so many providers have contracts with more than one county, they would not gain relief from multiple sources of accountability. On the other hand, children from different counties would be subject to different standards of care (often in the same program!). Children from poorer counties will suffer the most, since withdrawal of regulatory requirements will reduce the amount of state dollars under needs-based funding, and there will be a disincentive for those counties to require better services from their contractors.

Training is a wildly uneven way to ensure that services to children statewide will be of high quality. We at JLC have participated in and observed hundreds of training programs over the years, and well appreciate their strengths and limitations. While training is a component of quality control, it cannot substitute for a strong regulatory umbrella. Training is sporadic and doesn't necessarily reach all staff (especially when turnover is high). Training doesn't require good practice (as would decent regulations), and the quality of training depends upon the trainers.

Voluntary accreditation hardly inspires confidence. We note that a state that has never sought accreditation for its Youth Development Centers is not in the best position to urge private providers to seek accreditation for their programs.

All of the above problems might be tolerable if the regulatory changes were tied to requirements that programs achieve evaluable outcome measures. Developing outcomes-based systems was the theme of the reinventing government movement. The proposed 3800 regulations, however, don't move Pennsylvania's children's services to an outcomes-based model. They only lower mandatory standards, which is, obviously, unacceptable.

2. **The proposed 3800 regulations are harmful to children in their details.**

We made some of the following comments last July during the pre-publication period. DPW ignored them. We repeat them now because a) they remain valid concerns, and b) it is easier to put important safeguards in place at the outset, rather than try to redress injuries to children after the fact.

General Provisions

Section 3800.3. The definition of "dependent child" is not permitted by the Juvenile Act because it requires a request for an extension of care to be made "through counsel." "Through counsel" must be dropped from the definition.

General Requirements

Section 3800.16. We appreciate your inclusion of "a violation of a child's rights" in this section. It is unclear, however, how this is to be enforced. Self-reporting rarely works in institutional settings. If it works at all, it works best when the requirements are concrete (such as death of a child). It works less well when the violation itself is unlikely to be perceived as a violation by the institution or by the staff involved. (We note the recent Philadelphia Daily News story on Glen Mills Schools, in which staff of the facility differed from outsiders on whether certain kinds of physical contact rose to the level of abuse.) Linking this to Section 3800.32 doesn't help, since some parts of that Section are vague bromides, while others are statements of concrete rights. 3800.32(c), for example, is far less concrete than 3800.32(f). The way to make this meaningful is to improve upon the grievance procedures, by requiring every program to designate one staff person as an ombudsman to whom complaints can be made, or by providing for a confidential or an anonymous system of reporting both internally and to DPW.

A new provision 3800.16(i) should be added: "The facility shall notify the child's attorney immediately following the unusual incident relating to a specific child." This would apply to any court-committed child who was represented by counsel at the time of commitment.

Section 3800.17 should require that any physical restraint or striking be recorded in the incident record. We at JLC have had reports of agency staff punching students in the stomach, which does not require inpatient hospitalization, but which is an intimidation tactic that leaves no visible bruises. We would thus not limit the recording of incidents to injuries that require hospitalization.

Children's Rights

We would add the following language (in bold face) to Section 3800.34, dealing with grievances:

> **-- The grievance procedure shall be written in a clear, understandable fashion and shall be designed so that children may file grievances without fear of retaliation.**

In our experience, staff will retaliate against children who complain. Indeed, over the years we have had program administrators try to expel our clients when we called to raise issues about physical abuse.

> **-- The procedure shall be explained to every child upon admission to the facility and notation shall be made in the child's record confirming that the grievance procedure was explained.**

Section 3800.32 while helpful in some respects, is on balance a step backward. It unnecessarily reduces rights with respect to children's mail and will likely lead to litigation against the Department and providers. Section (e) as it relates to mail should be replaced by the current 3810.38(d), and, for detention centers (if DPW inappropriately insists on including them under these regulations), the current § 3760.37. Litigation is also likely to arise if programs adopt practices currently prohibited by Section 3810.37 and 3810.38. (It is unclear to us why DPW would drop requirements that permit contact with counsel or clergy.) The former 3810.37 and 3810.38 should be re-incorporated in the proposed 3800 regulations. So should current 3810.39, relating to children's money, and current 3810.56, relating to children's clothing, both of which are eliminated for no obvious reason.

The section on child rights illustrates why it is problematic to seek language that is the lowest common denominator, one-size-fits all. While some rights are the same for all children in all institutions, many rights will vary, depending upon the nature of the facility and the status of the child.

Consent to Treatment

Section 3800.18 of the proposed regulations provides little guidance on the law governing consent to medical treatment for minors. Such a failure will confuse providers, who are bound by the requirements of existing statutes governing the consent to treatment of minors regardless of the silence of the relevant regulations. Therefore, current Section 3810.52 on Consent to Treatment must be retained in its entirety.

Children's Health

Section 3800.141. Doctors who regularly treat children in substitute care complain that crucial information regarding the children's health is rarely available. They have advised that certain key pieces of information must be obtained at the earliest possible moment (preferably at the time the child enters substitute care). To conform to the advice that we have received, this section on health and safety assessment should be amended to include, at (c)(1): **hospitalizations; medical diagnoses; medical problems that run in the family; and any issues experienced by the child's mother during pregnancy with the child.**

Scott Implementation

Sections 3800.143, 3800.144, and 3800.146 represent the Department's effort to comply with Paragraph 26 of the settlement agreement in Scott v. Snider. In our view, these sections do not satisfy the requirements of Paragraph 26. Among other things, the draft regulations 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.

We are dismayed that DPW chose to ignore our July request that it share re-drafts of these sections of the regulations with us prior to publication as proposed rulemaking. We do not believe it appropriate to expect us to communicate with the Department through the regular public comment process on a matter of Scott compliance. Indeed, we will be corresponding separately with Department counsel on this matter.

Below, we provide the revisions we believe necessary to fully implement the settlement's requirements. Proposed deletions from the current text are shown in strikeout; suggested additions are shown in bold:

§ 3800.140. Purpose

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.[1]

§ 3800.143. Child physical examination

(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** ~~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 ___.**[2]

(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

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[1]We suggest this in order to make clear to those facilities governed by these regulations that the health requirements in fact satisfy EPSDT. (We believe that people in the field generally know about EPSDT, but that they will not necessarily realize that these regulations link up with EPSDT requirements unless that is made explicit.)

[2]In its introductory comments, the Department states that the proposed regulations require annual physical examinations. See Pennsylvania Bulletin, Vol. 28, No. 7, at p. 955. We support this requirement; however, the draft regulations do not implement it. The current version of the AAP Guidelines referred to in the regulations requires examinations only every other year for children between ages 6 and 10 (i.e., no examination at ages 7 and 9). The Guidelines also state that they are "designed for the care of children who are receiving competent parenting" and "have no manifestations of any important health problems." See "Recommendations for Preventive Pediatric Health Care," Committee on Practice and Ambulatory Medicine, American Academy of Pediatrics. By definition, many of the children affected by these regulations are not receiving competent parenting and have not received it in the past. We believe it necessary for basic protection of the children's health that all of them receive at least annual examinations.

required within the periodicity schedule specified in subsection (a).[3]

(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** ~~complete~~, unclothed physical examination.

(3) Immunizations, screening tests and laboratory tests ~~for children 17 years of age or younger~~, as recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision."[4] **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.

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[3]We believe it essential that facilities caring for children obtain and maintain health records regarding the children. No facility should be excused from obtaining a physical examination of a child unless the facility has obtained the record of the examination.

[4]The EPSDT program covers children and youth up to age 21. The AAP periodicity schedule includes recommended tests and screens up to that age as well.

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

(7)~~(5)~~ 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)~~(6)~~ Specific precautions to be taken if the child has a communicable disease, to prevent spread of the disease to other children.

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

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

(11)~~(9)~~ Allergies or contraindicated medications.

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

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

(14)~~(12)~~ 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.

§ 3800.144. Dental care.

(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)~~ A child who is 3 years of age or older shall have a dental examination performed by a licensed dentist and teeth cleaning performed by a licensed dental technician **within 30 days after admission and**~~,~~ at least semiannually **thereafter. The dental examination for children aged 8 and 14 must include application of protective sealants on the chewing surfaces of their molar teeth, unless the dentist determines that**

application of sealants is unnecessary, which conclusion will be documented in the child's dental record.[5]

(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) ~~(b)~~ 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) ~~(c)~~ Follow-up dental work indicated by the examination, such as treatment of cavities, **or application of protective dental sealants,** shall be provided in accordance with recommendations by the licensed dentist.

§ 3800.145. 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 3 years of age or older shall have vision 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 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.

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[5]This provision derives from Paragraph 8(d) of the Scott settlement.

(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.

§ 3800.146. 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 who is 3 years of age or older 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.

§ 3800.1457. 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.

§ 3800.1468. Health services.

(a) The facility shall arrange for or provide medical treatment for acute and chronic conditions of a child.

(b) **The facility must obtain for each child such other necessary health care, diagnostic services, treatment, and other measures** ~~Medically necessary health services,~~ (such as medical, nursing, pharmaceutical, dental, dietary and psychological

services) **to correct or ameliorate defects and physical and mental illnesses and conditions discovered by screening services and examinations.** ~~that are planned or prescribed for the child shall be arranged for or provided.~~

Behavioral Health

While the following section on Behavioral Health is not required by Scott, it is good practice and should be inserted following the current section entitled "Child Physical Examination":

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 had a comprehensive evaluation within three months prior to admission and that evaluation established 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 psychologist or psychiatrist, the child shall have a comprehensive reevaluation by a licensed psychologist or 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 also include (i) information regarding the child's academic functioning, (ii) any relevant medical information, (iii) an interview, if possible, with the child's last primary caretaker, and (iv) a discussion of the child's treatment needs.

In addition, the regulations do not appear to address the use of psychotropic medication. The facility should be responsible for ensuring that any such medications are prescribed by a physician who knows the child, are adequately monitored, and used only in conjunction with an active course of therapeutic treatment.

Education

These proposed regulations need to be amended.

Section 3800.223. Under (1), add, after "objectives": "including education objectives." Under (3), after "Services," add "including education and special education services."

Section 3800.226. The proposed provision is inadequate. It should be replaced by the following:

(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 eligible as a protected handicapped student under 22 PA 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 (i) the child's parents and the facility agree otherwise, or (ii) 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 (iii) 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.

(f) The staff person designated under subparagraph (e) 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.

Confidentiality of Records

The proposed regulations are silent as to the confidentiality of records. See Child Records, §§ 3800.241-245. 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. Therefore, the following language should be added to the Child Record provisions:

Confidentiality.

(a) All client records and information are confidential and may not be disclosed directly or indirectly without the written consent of the child's parent or the agency having custody of the child, if applicable, or the child (i) as to mental health records and information if the child is 14 years of age or older and (ii) as to records relating to treatment for conditions relating to drug and alcohol use, pregnancy and venereal disease and those other conditions and instances specified by 35 P.S. §§ 10101-10105.

(b) Notwithstanding subsection (a), client records and information shall be disclosed, upon request, to:

- **(i) a child's parents or guardian, except as to (1) mental health records if the child is 14 years of age or older and declines to consent to such a release, (2) records relating to treatment for conditions relating to drug and alcohol use, pregnancy and venereal disease and those other conditions and instances specified by 35 P.S. §§ 10101-10105 and the child declines to consent to such a release, and (3) records relating to abortion so long as parental consent was not provided for the procedure;**
- **(ii) to a parent's attorney according to the same terms as set forth in subsection (i);**
- **(iii) a child's attorney;**
- **(iv) a court and court services personnel, if applicable;**
- **(v) staff of the county agency having custody of the child, if applicable;**
- **(vi) authorized Department staff; and**
- **(vii) service providers, in accordance with existing law, so long as the information being released is necessary to protect the child's health and safety and to assist in the child's successful accomplishment of necessary educational, developmental and/or remedial tasks or progress.**

(c) Information from the client record may not be released to a person or agency other than those specified in subparagraphs (b) without prior authorization of the court.

(d) Information contained in the client record is protected by 23 Pa.C.S. Part III (relating to the Adoption Act), 23 Pa.C.S. §§ 6301-6384 (relating to the Child Protective Services Law), and Chapter 3490 (relating to child protective services-child abuse). Access to and release of information shall be in accordance with those statutes as well as the requirements set forth herein.

Child's Records

Section 3800.242. Add, at the end of (a), "which shall include the child's education and special education records."

Section 3800.243. To the list of identifying information in (1), add **"Medical Assistance recipient number and HMO member number, if applicable."**

After (3), add vision examinations and hearing examinations (this links with our earlier comments regarding revisions required by Scott).

Item (9), "Consent for Treatment," is not meaningful as written. It should at least cross-reference the revised version of § 3800.18 that we have proposed.

Later in this document we explain why secure detention should not be governed by new regulations. The following discusses secure care in general.

Secure Care

The proposed regulations would permit an increase in secure care facilities, not only for delinquent children but for others as well. The Commonwealth has long had a presumption against the use of secure care, even for delinquents. Since the proposed regulations would allow for locked or fenced buildings, as well as increased use of handcuffs and locked seclusion rooms, this proposal is a dramatic step. Such a step should only take place after a thoughtful discourse on the justification for permitting secure care, in particular for non-delinquent children. We believe that discourse has yet to occur.

Clearly, the Department may license secure facilities but until now it had not officially promulgated secure care standards. While we recognize the need for secure care facilities for some children alleged or adjudicated delinquent,

the proposed secure care regulations fail to limit their use to this population. The regulations should not apply to any other category of facility or child. Thus, the Department should expressly prohibit the placement of non-delinquent children in secure care, modify the proposed behavior management measures, delineate the legal rights of juveniles in secure care, and require that due process protections be afforded to youth.

Moreover, we believe that any secure care regulations should govern State-operated facilities for delinquent children. Five years ago the Department agreed to implement wide-ranging secure care standards at YDC-Bensalem. DPW's values would be well served by recognizing the applicability of the D.B. v. Casey settlement decree to the 3800 regulations for secure care.

The regulations must exclude the placement of non-delinquent children in secure care facilities.

The proposed regulation allows "children who are court ordered" to be placed in a secure facility. We strongly oppose this provision because inclusion of non-delinquent children in secure care facilities has not been justified. At the least, we suggest amending Section 3800.271, Criteria, to read:

> **Secure care is permitted only for children who are adjudicated delinquent and court ordered to a secure facility.**

The proposed regulations permit too much use of exclusion and handcuffs, are unjustified, and are harmful to children.

The proposed regulations inappropriately extend the use of certain behavior management interventions, such as exclusion ("isolation" in other regulations) and handcuffs. Twenty years of experience with the detention center regulations, and five years with the Bensalem decree, demonstrate that less restrictive measures can be implemented in a way that serve the goals of behavior management without harm to children or detention centers. Indeed both require that exclusion and handcuffs in secure facilities should be only used for very short-term control of behavior. They are never an appropriate form of treatment or discipline, and thus are never warranted for prolonged periods of time.

The proposed behavior interventions would permit six-hour periods of handcuffing that could be repeated indefinitely. By contrast, under the current detention center regulation, § 3760.42, the use of handcuffs cannot exceed one hour. In our view, the proposed expansive use of handcuffs and exclusion is unjustified. The current § 3760 regulations limiting the use of

handcuffs and exclusion should remain the standard for all secure care, replacing proposed § 3800.273(13) - (14).

We call attention to § 3760.42, Use of Isolation and Handcuffs, specifically the following sections, which should be included in any new regulations:

> **§ 3760.42(a) - requiring staff to prevent aggressive, disruptive or threatening behavior by recognizing indications of impending behavior and intervening in a positive, and constructive manner to neutralize or prevent acting-out. Moreover, isolation and handcuffs shall only be used to control behavior which is a clear and present danger to the resident, to other residents, or to staff;**
>
> **§ 3760.42(b) - mandating that residents requiring seclusion or handcuffs not be denied food, or subjected to corporal punishment, or abusive or degrading treatment;**
>
> **§ 3760.42(e) - requiring the facility to establish a separate log for the sole purpose of recording the use of seclusion and handcuffs; and**
>
> **§ 3760.42(f)(2) When handcuffs are used, the child must have a staff person in the room, who has no duties other than supervision of the child.**

The regulations lack admissions criteria to determine appropriate placement.

To ensure legal and appropriate placement of children in secure care pursuant to a court order, the regulations should require that facilities adopt the Bensalem consent decree procedures for admission:

> **a. Prior to accepting a child in secure care, the facility will make reasonable efforts to receive in writing from the committing court the following:**
>
> > **(1) A description of the offenses and circumstances that make secure care placement necessary;**
> >
> > **(2) the needs of the child that must be addressed during placement; and**
> >
> > **(3) a court order committing the child to a secure facility.**

b. 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.

We suggest that the facility notify the committing court in writing within 48 hours of the child's arrival.

Discipline in Secure Facilities

In addition, the following section on discipline should be adopted for secure care delinquency facilities. The proposed 3800 regulations provide no guidance on a secure facility's administration of discipline to children. This will produce harmful consequences for children in placement (especially children adjudicated delinquent and court ordered to a secure facility) because it will affect lengths of stay. A single disciplinary incident can serve as the basis for a recommendation to lengthen the duration of a child's commitment. Children in placement deserve the discipline measures adopted and successfully implemented at YDC Bensalem. (See YDC-Bensalem Settlement, Section 8, Discipline Policy.) Moreover the discipline policies in § 3680.43 (c) (relating to agency discipline policies) should be included in the proposed secure care regulations. Finally, we urge the Department to adopt the following proposed language regarding discipline policy in secure facilities, and to adopt a similar section for non-secure care facilities.

A. The facility's discipline policy must meet the following requirements:

(1) The policy shall stress praise and encouragement;

(2) The policy shall stress individual accountability for behavior;

(3) The policy shall prohibit abusive and degrading practices, including:

(a) Ridicule, verbal abuse and threats, or derogatory or humiliating remarks;

(b) Physical punishment inflicted upon the body;

(c) Punishment for bed wetting:

(d) Delegation of discipline to another child or group of children;

(e) Denial of food, water, shelter, sufficient sleep, clothing or bedding, or education;

(f) Denial of communication with or visiting by or with the child's family;

(g) Assignment of physically strenuous exercise or work solely as punishment;

(h) Requiring a child to remain silent for long periods of time;

(i) Group punishment for the behavior of a single child (punishment in this context shall not include legitimate, professionally recognized methods of group treatment or therapy); and,

(j) Delegation of discipline to persons not known to the child.

B. A facility's discipline policy shall ensure that any disciplinary sanctions imposed as a result of rules violations shall be imposed consistent with the individual child's treatment plan and needs. Procedures employed for the imposition of discipline shall be uniformly applied to children and shall be uniformly applied by staff.

C. In connection with the imposition of any discipline that will either serve as the basis for a recommendation to extend the child's commitment to the facility beyond the time originally contemplated, or that will result in the permanent deprivation of a right or privilege normally granted to children at the facility, the facility shall adhere to the following procedures:

(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.

3. **The regulations should not apply to secure detention or day treatment programs**.

We applaud the Department's finally including wilderness programs under the regulatory umbrella. However, we do not understand how residential regulations are applicable to day treatment programs. Nor do we believe that generic regulations will work well in secure detention. Secure detention should be dropped from coverage by these regulations.

Instead, separate detention center regulations should be updated to be consistent with current law and JDCAP performance-based standards. Indeed, the JDCAP standards are aspirational and among the best anywhere in the country. It is inappropriate to ignore them while at the same time reducing basic protections.

It is worth remembering that the current set of regulations was adopted twenty years ago after JLC's litigation over practices at a modern detention facility. DPW responded with solid regulations that have been internalized and institutionalized by generations of detention center staff. Since detention centers usually do not have multiple licenses, are run by county government, and have a short-term, often-difficult population, it does not seem that any of DPW's values are served by including them in the proposed regulations.

For the above reasons, we strongly object to the repeal of existing secure detention regulations. However, if the Department proceeds with fitting detention centers into a 3800 Procrustean Bed, we call the following concerns to your attention:

The regulations erode due process protections for children alleged or adjudicated delinquent.

The proposed regulations do not sufficiently provide due process protections for children. The 3800 regulations expand the definition of children that can be securely detained. For example, Section 3800.3 apparently covers dependent children in its definition of children who can be accepted in secure detention. At the least, we believe that the following definition should be added after "secure detention":

> **Secure detention - A type of secure care located in a temporary residential setting, in which one or more delinquent or alleged delinquent children are detained.**

However, simply changing the definition of secure detention is not sufficient. The following due process measures must be added to Section 3800.281, Requirements for Secure Detention:

(1) Detention parameters. The regulations should specify the circumstances for which the detention of a child is illegal and inappropriate. We call attention to § 3760.6, General Requirements. Similar language should be included in the 3800 regulations:

> § 3760.6(b) - specify the eight circumstances for which a child's detention is illegal and inappropriate;
>
> § 3760.6(c) - require notification of the child's attorney and parents if violation of (b), as well as releasing the child and notifying the Department;
>
> § 3760.6(g) - define minimum age for detention; and
>
> § 3760.6(j) - require that a child remain in a detention center no longer than is absolutely necessary.

(2) Admissions. The 3800 regulations lack appropriate intake procedures to ensure that a resident has been detained legally. The current § 3760.21 (a) through (g) (admissions) must remain in place.

(3) Unnecessary Detention. The 3800 regulations fail to recognize a detention center's legal obligation to ensure that children are not held longer than necessary. This obligation is recognized in § 3760.22(f), which requires DPW notification of detention exceeding 35 days. Such instances of detention must be brought to the attention of DPW as follows:

> **Notification of Unnecessary Detention. 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 birthdate; (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.**

(4) Placement Review. Section § 3760.22(g) requires weekly review of the detention placement of each resident to determine recommendations for a less restrictive placement. The provision should be retained in Chapter 3800 as follows:

> **The detention placement of each resident shall be reviewed continually, and a formal review by staff 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.**

Changing the physical space requirements may produce harmful consequences for children.

Space in detention centers is at a premium. Consequently, facilities are pressured to make rooms serve many purposes. Regulations § 3760.71 through § 3760.81, Physical Plant, must remain in place to ensure a safe and healthy environment. Specific attention must be given to the following areas:

Building Capacity. It is a serious mistake to change the population capacity requirements of current detention regulation § 3760.71. This regulation has played an important role in preventing the construction of unnecessary detention space, while encouraging alternatives to detention.

The following language should be adopted:

> **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, televison, 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.**
>
> **Visiting Rooms. Space shall be provided where children may receive and talk with visitors privately.**
>
> **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.**

The proposed regulations covering standards of service would erode the present quality of care provided to children in detention centers.

The proposed regulations would greatly erode the present quality of care in detention centers. We elaborate upon recreation and visitation to reflect our general concern about quality of care.

(1) Recreation. Exercise and recreation are essential to good health. They also contribute to maintaining order and facility control because of the outlet they give to youth. Thus, a detention center must provide juveniles with a well designed and comprehensive recreation program. The current regulation § 3760.34(recreation) requires special efforts to provide daily physical exercise. Furthermore, as required by current detention

regulations, a facility of more than 50 people must have a recreation specialist to ensure a balanced recreation program.

(2) Visitation. Because strong family and community ties increase the likelihood that a juvenile will succeed, visits should be encouraged. Provisions should be made for a pleasant surrounding, with minimal surveillance to ensure privacy. Few restrictions should be placed on juvenile visitation rights without substantial justification. Regulation § 3800.32(f) is unnecessarily restrictive. The current § 3760.36 (visiting) contributes toward a positive behavior management program.

The behavior management interventions, such as exclusion and handcuffs are too restrictive, harmful to children, and unjustified.

As noted in our comments on secure care, the proposed regulations governing behavior interventions, such as exclusion and handcuffs, are unnecessarily restrictive. Moreover, they are potentially much more harmful to children in secure detention because they are often in a state of crisis for which restraints like handcuffs are hardly therapeutic. Experts agree that exclusion and handcuffs in secure detention facilities should only be used for very short term control of behavior. They are never an appropriate form of treatment or discipline, and thus are never warranted for prolonged periods of time. Section 3760.42, delineating the maximum use of handcuffs and exclusion, should remain in effect.

Permitting firearms & weapons in a detention center is dangerous, harmful, and not justified.

Section 3800.101, Firearms and Weapons, unnecessarily allows firearms in secure detention centers. The presence of firearms greatly adds to the risk of gun theft, accidental discharge, serious injury and death. Guns can become a substitute for skill in managing behavior. Well-trained staff don't need guns, and they have never before been present in Pennsylvania detention facilities. Section 3760.6(o), which excludes such weapons from the facility, must be retained. The proposed regulation should be replaced in its entirety as follows:

> **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.** (emphasis added)

Additional health requirements should be required for secure detention.

We also believe that additional health care requirements should be required for secure detention centers. We recommend following some of the requirements of the Standards promulgated by JDCAP. In particular, JDCAP's health screening section includes assessment at admission to determine need for detox services for alcohol and other drugs. This may not be relevant to other types of facilities covered by these regulations, but JDCAP classifies it as basic, and it strikes us as very wise.

Thank you for extending the time in which to comment on these proposed regulations. We look forward to further discussions with you.

Sincerely,

Robert G. Schwartz
Executive Director

RGS/hs
cc: Robert E. Nyce
Shelly Yanoff
Joan Benso
Frank Cervone
Len Reiser

JUN 0 9 1998

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The Honorable Kevin Blaum
House of Representatives
Harrisburg, Pennsylvania 17120

Dear Representative Blaum:

This is in response to your letter of May 4, 1998 regarding the proposed regulations for Child Residential and Day Treatment Facilities. I appreciate your support of the extension of the public comment period on the proposed regulations. We have received many public comments from external stakeholders representing various viewpoints.

We have developed the proposed regulations with broad opportunities and forums for involvement from providers of service, advocates and consumers. We plan to continue to meet with stakeholders over the next several months to continue the dialogue we started during the proposed regulation development process. We have appreciated the opportunity to meet with Mr. Michael Rish and Ms. Jane Mendlow of your staff during the past few months. Ongoing dialogue is valuable to understanding the differing viewpoints of those affected by the proposed regulations.

It is our belief that the proposed regulations provide substantially increased protections for consumers over the existing regulations. Enclosed is a list of some of these improved consumer protections. In many regulatory areas, such as staffing, fire safety, crisis intervention, medication administration, unusual incident reporting, transitional living, secure care, and outdoor programs, the proposed regulations include new or strengthened protections for the children receiving services in these facilities.

The regulatory consolidation of the eight existing chapters of regulations also offers increased safeguards. Many of the providers of service regulated by these regulations operate various types of day and residential programs for children. In addition, many of the children served in the programs move regularly within these various service types (for example, a common example is a child who moves from a secure detention facility, to a secure care facility, and then back home with their family receiving day treatment supports). Currently, varied and sometimes conflicting regulations apply and it is confusing for both the child and his/her family and the provider to understand and comply with the many different requirements. By having one consistent set of requirements applicable for all children, we believe we are best meeting the needs of the child. We believe that a child's need for health and safety protection is very similar regardless of any disability or treatment need, and that program and treatment needs should be met on an individualized basis based on each child's unique needs.

While the proposed regulations include the requirements for several service types in one chapter, individual program differences are retained. The proposal includes special requirements for programs such as secure care, secure detention, day treatment, transitional living, outdoor programs and mobile programs. Based on comments received, we may further expand the differences for both day treatment and secure detention. However, our mutual focus should be on the regulatory content for the specific programs, rather than the regulatory consolidation format. Several advocacy groups we spoke with recently, have agreed with this principle.

I appreciate and share your specific concerns relating to program content and quality for individual children. The approach used in the proposed regulations is to provide similar, comprehensive health and safety protections for all children, while maintaining, and even requiring, individual planning for each child based on his/her own needs. The proposed regulations require individualized health and safety assessments for each child upon admission (§3800.141), individual service plans based on the individual needs of each child with content in the plan expanded and improved from existing regulations (§3800.221), and individual behavior intervention plans that now only exist for children in community mental retardation facilities (§3800.203). In addition, these regulations do not exist in a vacuum. Other protections continue to apply such as the Mental Health Procedures Act addressing consent issues and program planning, Chapter 3130 regulations for county children and youth agencies addressing family service planning, placement requirements and case management, and the mental retardation service system including long term planning for children.

You have raised several concerns regarding our initial research phase in development of the proposed regulations. In early 1997, before we began the regulatory drafting and development process, extensive research was conducted. All of the sources you recommend, and indeed many other national and state resources, were included in our initial research review. Please note however, on the first two pages of the Council on Accreditation 1997 Standards document that you attached to your letter, that the difference between state licensing regulations and accreditation standards is clearly stated. Accreditation standards are standards of excellence representing goals for practice and carry no implication of regulation. State licensing regulations are basic protections for the well-being and protection of the children where police power is used to protect children against risks. While accreditation and licensing are compatible and complementary, each has different goals, legal authority, and enforcement powers. Attached are two documents from Professor Gwen Morgan, Wheelock College further describing these differences.

You have also identified the National Association for Regulatory Administration (NARA) as a source you contacted to find other states involved in a similar consolidation effort. Ms. Karen E. Kroh, manager of the Cross-System Licensing Project and co-author of the proposed regulations, is President of NARA. Ms. Kroh apologizes for any misunderstanding in your call to the St. Paul office, but as NARA's St. Paul staff explained, they are administrative

support staff who are not involved in policy matters of this sort. NARA indeed has very recently worked directly for Delaware to develop combined regulations for secure care, secure detention, day treatment, group homes, shelter care, transitional living, parenting facilities, outdoor programs and programs serving children with disabilities. Minnesota also is working to consolidate eight existing regulations into one, including programs such as residential treatment, maternity shelter, child foster care, group homes, and secure detention.

Thank you for your comments and suggestions for improving the proposed regulations. We will continue to study your concerns and those of other external stakeholders including advocates, consumers and providers of service as we prepare the final regulations.

Sincerely,

Feather O. Houstoun

Enclosures
bcc: Secretary Houstoun (RS #152139)
Ms. Dierkers
Ms. Lawer
Ms. Calhoun
Ms. Mentzer
Ms. Thaler
Mr. Curie
Ms. Kroh
File

APR 29 1998

Original: 1927
Copies: Wilmarth
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The Honorable Leonard Q. Gruppo
House of Representatives
Harrisburg, Pennsylvania 17120

Dear Representative Gruppo:

Thank you for your comments on the proposed Child Residential and Day Treatment licensing regulations published as proposed rulemaking on February 14, 1998. I am pleased we were able to meet with your committee staff to discuss the regulations.

As you know, we have received considerable public comment and suggestions for improvements on the proposed regulations. We have developed the proposed regulations with broad opportunities and forums for involvement from consumers, advocates, and providers of service. We plan to continue to meet with stakeholders over the next several months to continue the dialogue we started during the proposed regulation development process. Please be assured that we will consider all comments submitted and work to strike the proper balance between provider cost considerations and the child health and safety protections we are responsible for ensuring.

We understand and recognize the diversity of the children's needs in the programs covered by these regulations. We will continue to carefully study these differences in order to regulate appropriately for the varied service types and for each child's individual protection needs.

I thank you for your thoughtful comments and look forward to continued dialogue on the proposed regulations as we proceed through the final rulemaking process.

Sincerely,

Feather O. Houstoun

KK:rs
bcc: Secretary Houstoun (RS #151855)
Ms. Dierkers
Ms. Lawer
Ms. Calhoun
Ms. Mentzer
file

LEONARD Q. GRUPPO, MEMBER
47E EAST WING
HOUSE POST OFFICE BOX 202020
HARRISBURG, PENNSYLVANIA 17120-2020
PHONE: (717) 783-6437

15 SOUTH MAIN STREET, UNIT #1
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15155 KK-Do ca RJS

COMMITTEES

AGING AND YOUTH
MAJORITY CHAIRMAN
GAME AND FISHERIES

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

DIERKERS
FYI

April 14, 1998 APR 15 11 08 AM '98

made cc: HOUSTOUN
LAWER
CALHOUN
MENTZER
FILE

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

Dear Secretary Houstoun:

As Majority Chairman of the House Aging and Youth Committee, I want to thank you for extending the public comment period for the Child Residential and Day Treatment Facilities proposed rulemaking. In addition, I appreciate the willingness of your staff to meet with Aging and Youth Committee staff in order to discuss this proposal in further detail.

The extent of the public comments submitted are, I believe, truly indicative of the need for further discussions with the provider community and parents of those children who benefit from the services covered within the scope of this regulatory package. Given the specificity of the comments, I do not feel it is necessary to reiterate each precise issue at this point in time. I strongly encourage you, as such, to engage the department in such "stakeholder" discussions in order to formulate a final regulatory package that represents a common sense approach to ensuring that all children utilizing these services as well as the staff who work in these various environments, are provided with the maximum protections for their health, safety and well-being.

In addition, it is essential that every effort be made to recognize the diversity of the needs of the children who are served in the various settings which are proposed to be covered by these regulations. Certainly, we should not infringe on attempts to normalize clients, when appropriate. However, we must also be cognizant of the need to allow for implementation of certain techniques and behavior intervention procedures that are unique to the specific issues affecting the various types of populations being served.

I look forward to continuing to work with you on this most important matter.

Sincerely,

Representative Leonard Q. Gruppo
Majority Chairman
House Aging and Youth Committee

cc: Mr. John R. McGinley, Jr., Chairman, IRRC
Commissioner Alvin Bush
Commissioner Arthur Coccodrilli
Commissioner Robert J. Harbison, III
Commissioner John F. Mizner
Robert E. Nyce, Executive Director, IRRC
Richard M. Sandusky, Director of Regulatory Analysis, IRRC
Mary Lou Harris, Regulatory Analyst, IRRC
All Members, House Aging and Youth Committee

RECEIVED
OFFICE OF POLICY DEVELOPMENT
APR 16 1998
REFER TO:

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(35)

Hoffman Homes, Inc.

P.O. Box 4777 • Gettysburg, Pennsylvania 17325
717-359-7148 • (Fax/TDD) 717-359-2600

Division of Program Development

MAR 16 1998

March 13, 1998

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

Re: Proposed 3800 Regulations

Dear Mr. Gioffre:

I have taken the opportunity to offer suggestions, comments and questions concerning these proposed regulations. Your consideration and response would very much be appreciated. Thank you for allowing my agency this opportunity.

Sincerely,

George Sepic

George Sepic M Ed., MSW, LSW
Executive Director

Hoffman Homes, Inc.
P.O. Box 4777 • Gettysburg, Pennsylvania 17325
717-359-7148 • (Fax/TDD) 717-359-2600

Response to Proposed 3800 Regulations

3800.141 - 3800.147 - Smoking: Define "on premises". May staff be permitted to smoke in their personal vehicles parked on HH property? Question "possession" -- Does this mean tobacco products cannot be kept in the cars or on the person of staff members?

3800.188 - Is there a DPW "approved medication administration" policy, and if so, where do we get a copy of one, or how do we get one written by HH staff approved?

3800.106 - Pond areas - HH takes exception to the policy of fencing ponds. There are ponds on private property that are in closer proximity to the children than those at HH. Would a certified life-guard be required if children are fishing and not swimming? Our children are never permitted in these pond areas without direct staff supervision.

3800.32 - Does a child have the right to practice Satanism? Perhaps regulation should state child has the right to "believe", instead of "practice"; and if "practice" is stated, the regulation should specify that the facility has the right to choose the time and place of such practice.

3800.54 - Does a LPN qualify under (d) (2)? Perhaps LPN should be added to this regulation.

3800.56 - "at least every hour" is too long of a time span for observing sleeping children. Currently, we do 10 minute bed checks during sleeping hours.

3800.209 - Several questions arose: "examine" needs to be defined in (c) (1) and (c) (2); the time frame for monitoring needs to be defined in (d) (1); would HH qualify for a waiver in (2) (e) for PRN medications; and a definition of "chemical restraint drugs" is needed.

3800.211 - An explanation is needed in (e) if there is only one person, or all persons present are involved in the TH. Who should be observing? This standard is unrealistic in many instances.

3800.225 - Does HH follow DPW or MH regulations relating to the age of consent for a child? If a child 14 or over does not sign a release for parents to get a copy of the ISP, which regulation applies?

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

3/2/98

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Dear Mr. Gioffre,
As the parent of a child who has special needs, I feel it is important to give you my input on the proposed regulations that your dept. has written.
Beyond what your regulations cover, you need to cover areas such as requirements for the therapists who will treat the children. How you will include the families of the children in the therapy and treatment. Times when the parents must be notified of things, not just the agency who arranged for the child to be in a program. What kinds of checks your dept. will do to make sure that programs are running the way they say they will.
There are a great number of things that I think your regulations should cover that they don't. I don't believe that most service agencies will do anymore than the basics if you don't put those things into your regulations. And have a way of checking up on them.
Please, to protect all of our children who need these services, make these regulations force good services or not allow people who will do a slipshod job get a license.

Thank-you,
Peggy Hayes

Peggy Hayes
Parent

GAUDENZIA

March 17, 1998

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

Dear Mr. Gioffre:

This letter is in reference to the proposed rule making on 55 PA Code CHS, 3680, 3710, 3760, 3800, 3810, 5310 and 6400 as published in the Pennsylvania Bulletin, Vol. 28, No. 7 on February 14, 1998.

There is a dire need for licensing of drug and alcohol treatment services to be maintained. It is imperative for the confidentiality of the clients that are receiving services.

I am in favor of the exclusion of licensed drug and alcohol programs with children from these regulations. These regulations are not adequate to guarantee a minimum level of care for treatment.

Thank you for your consideration regarding this issue. I am available if you have any additional questions.

Sincerely,

Cecilia M. Velasquez

Cecilia M. Velasquez, MHS
Director, Gaudenzia Kindred House

Gaudenzia, Inc.
KINDRED HOUSE
1030 S. Concord Road
West Chester, PA 19382-7407
215/399-6571
FAX: 215/399-3205

(132)

The Children's Home of Easton Services, Inc.

Twenty-Fifth Street and Lehigh Drive • Easton, Pennsylvania 18042 (610) 258-2831 • FAX (610) 258-3165

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MICHAEL H. DANJCZEK, Ed.D.
Executive Director/President

April 13, 1998

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

Dear Mr. Gioffre:

On behalf of the Children's Home of Easton I wish to offer 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.

Section 3800.56(d) Supervision:
The proposed regulation requires awake staff even if just one adjudicate delinquent is placed in a facility that otherwise would not require awake staff. I believe this regulation removes an important treatment modality and options for judges who would like to see certain delinquents be given the opportunity to be handled in a less restrictive and open setting. Our track record in treating both dependent and delinquent children in a similar fashion speaks for itself. With the guidance of the courts and our own admission criteria we have been able to appropriately accept and treat a few delinquents within our dependent population.

I would challenge those who have written this new regulation to spend time on our campus and identify which few children are delinquent. My point is, the court label should not determine the best individual treatment modality chosen by the placing agency.

Thanking you in advance for your kind consideration, I am

Yours sincerely,

MHD/je

Michael H. Danjczek, Ed.D.

cc: M. Jeanne DeAngelis,PCCS

The Children's Home OF READING

BUILDING KIDS' LIVES

1010 Centre Avenue, Reading, PA 19601-1498
Phone (610) 478-8266
Fax (610) 478-8094

EXECUTIVE DIRECTOR: KENDELL A. TESELLE, A.C.S.W.

March 23, 1998

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MAR 2 5 1998

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

Dear Mr. Gioffre:

This letter serves as written testimony to the Proposed Rule Making--Chapter 3800 that appeared in the Pennsylvania Bulletin, Vol 28, No. 7, Sunday, February 14, 1998.

The Children's Home of Reading is a non-profit, treatment-oriented environment for children and families who are experiencing problems and to provide such other opportunities to enrich their lives. We have a long history (114 years) of serving boys and girls in the Commonwealth of Pennsylvania. Our programs include Shelter, Drug and Alcohol (residential and non-residential), Adolescent Treatment Center (sexual offenders), Specialized Foster Care, Maternal-Baby Substance Abuse, and Independent Living. Last year we served more than 800 boys and girls.

We are particularly concerned with Section 3800.57 Staff Training Section (b) #(4) which states:

> "(b) Prior to working alone with children and within 60 calendar days after date of hire, each full-time staff person who will have direct contact with children and the director, shall have at least 30 hours of training to include at least the following areas:
> (4) ...cardiopulmonary resuscitation."

Our situation is as follows: The Children's Home of Reading has at a minimum, at least two staff persons per shift, per program certified in CPR (cardiopulmonary resuscitation). All staff receive a refresher course each year

to maintain their certification. New hires do receive CPR training within three to four months of their start date.

We questions why these proposed regulations require the CPR training of new hires within 60 calendar days without any provision for agencies such as ours who already have a minimum of two certified CPR staff per shift, per program? To comply seems like an unnecessary additional expense.

Thank you for giving us this opportunity to give written testimony on these proposed regulations.

Sincerely,

Kendell A. TeSelle, A.C.S.W.
Executive Director

/gkk

(40)

MAR 17 1998

MAR 19 PM 3:52

REVIEW COMMISSION

The Arc Pennsylvania

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2001 North Front Street
Harrisburg, PA 17102
Telephone (717) 234-2621
FAX (717) 234-7615

EDWARD G. TITTERTON,III
President

W. A. WEST
Executive Director

March 16, 1998

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

Dear Mr. Gioffre:

This letter represents the position of the Community Services Committee of The Arc-Pennsylvania. This Committee has a representative on the Independent Monitoring Work Group, a sub-committee of the Office of Mental Retardation's Planning Advisory Council which is chaired by Grahm Mulholland of the Developmental Disabilities Planning Council. The purpose of that committee is to design a system of independent monitoring to address the quality of life, health, safety and welfare of all citizens with mental retardation. The intention is to extend this monitoring system to all citizens regardless of where they live. The sub-committee coordinates its activities as appropriate with those working in the area of regulatory reform, licensing and other forms of quality assurance.

We, as a Committee, are responding to the proposed changes to the Department of Public Welfare's Chapter 3800 Child Residential and Day Treatment Facilities regulations. We suggest that the public comment period be extended at least until January 1, 1999. At that time the sub-committee expects to have the new system tool developed and the proposal will be presented to the Office of Mental Retardation for consideration. This system tool will address the issue targeted by the proposed Bulletin.

Respectfully

Martin Murray, Chairperson
Community Services Committee

M/jb
Cc: Jane Mendlow

The Arc Pennsylvania

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Harrisburg, PA 17102
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EDWARD G. TITTERTON,III
President

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Executive Director

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March 6, 1998

Mr. Robert L. Gioffre
Department of Public Welfare
PO Box 2675
Harrisburg, PA 17105-2875

Dear Mr. Gioffre:

After careful review of the proposed Chapter 3800 Child Residential and Day Treatment Facility regulations, I am compelled to comment on both the process of these reform efforts and the specific content of these proposed regulations.

As an agency that serves individuals with developmental disabilities and works to insure adequate services and supports along with adequate protections, I am concerned with the potential negative effects that these new "combined" regulations may produce.

The regulations being proposed are said to represent an effort on behalf of the Department to eliminate or reduce duplication and inconsistencies within licensing regulations, strengthen health and safety requirements, consolidate chapters of regulations where appropriate, and relocate items currently in regulations that go beyond minimum health and safety to more appropriate locations such as contract standards, training and technical assistance programs and voluntary accreditation.

Before commenting on specific sections of the proposed changes, I am voicing my concern over the fact that **qualitative measurements** are not yet in place and it is premature to omit them from the regulatory process. Also, your efforts to reduce duplication in licensing standards may have an adverse affect on facilities that currently serve "mixed populations" while making it easier for providers to create and administer more programs designed along a generic basis. Children with mental retardation could be adversely affected by a treatment approach that will not necessarily specialize in their needs.

The proposed changes contain some areas that could be detrimental in the care of children. One area that has been omitted is that of good assessments of the children. The current 6400 regulations contain 15 areas that are outlined in an assessment of the child 6400.121.Assessment(e). These include areas such as the documentation of disability, strengths and needs, likes and dislikes, level of personal and social adjustment, understanding of danger, etc. This information is important for the treatment team members who often do not have the time to get to know the child before they are in charge of their care.

Due to a history of abuse, neglect and lack of control over the lives of people with disabilities, advocates and concerned people have worked very hard to help insure that their rights and liberties are respected. The new regulations have diminished some of these rights under section 3800.16. Certain areas have been omitted from the current 6400.33 regulations including the rights to privacy, property, and protections from research projects. The Civil Rights section in the proposed regulations 3800.33 falls short of explaining the need for policy, procedures, accommodations and complaints as is addressed in the 6400.34 Civil Rights Section.

The most blatant omission in the proposed new regulations is that of defining and accounting for the use of restrictive procedures. This is where a generic approach may not be in the best interest of children with developmental disabilities or with other children for that matter. The Behavioral Intervention section of the new regulations does not clarify when manual restraining and exclusion should be used as it does in the 6400 regulations that state...manual restraints (and exclusion) shall be used only when necessary to protect the individual from injuring himself or others and when it has been documented that other less restrictive methods have been unsuccessful in protecting the individual from injuring himself or others.

These are just a few of the issues that came to my attention upon review of the information. More time is needed for further review by all of the interested parties and I urge that you extend the comment deadline.

The magnitude of the whole reform process should not be taken lightly. Many people would agree that reform is needed, but the process needs to be carried out in a manner that is inclusive of everyone that will be affected. I urge you to delay this process in order to get more public input.

Sincerely,

Becky Allen
The Arc-PA

(23)

THE TERRACES

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CENTER FOR ADDICTION MEDICINE & BEHAVIORAL HEALTH

March 9, 1998

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

Dear Mr. Gioffre:

We have received and reviewed the February 14, 1998, edition of the Pennsylvania Bulletin, outlining the Department's proposed revisions to the regulations affecting Child Residential and Day Treatment Facilities. The revised regulations are a vast improvement over the existing ones, and compliance should be a relatively easy matter.

In our opinion, there are two areas requiring clarification.

1) Section 3800.2(a) and 3800.2(g)(9) state that the regulations do not apply to facilities licensed under 28 Pa. Code Chapters 701, 704, and 709. Does this mean that the drug & alcohol licensing regulations are the only ones we will be required to adhere to? How will that affect our licensure as a residential treatment facility?
2) Section 3800.57(a) states, "Prior to working with children...", while 3800.57(b) states, "Prior to working alone with children...". Should the word "alone" pertain to both sections, or is it correctly used in (b) alone?

Clarification of these items would be appreciated.

Sincerely,

Patricia Bixler
Executive Director

The Terraces, LC

P O Box 729 • 1170 South State Street • Ephrata, PA 17522-0729 • **Phone**: 717-859-4100 • **FAX**: 717-859-2131 • **Toll-free**: 800-441-7345

March 14, 1998

Teen Retreat
1323 W. 3rd. Street
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(610) 872-0800

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Teen Retreat's (a facility for teen aged dependent females) response to the Department's Amended Rules!!

1. 3800.143 Child Physical Examination

This rule is unfair because the facility might make the appointment but can't get the physical done within the 15 days, most of our clients attend the local clinic (ChesPenn Clinic), we can call in the middle of the month and will not get an appointment until the middle of next month. As soon as a client comes to us, if they haven't had an examination in the allotted time frame, we set-up an appointment for their own safety and other clients in in our facility.

2. 3800.145 Tobacco Prohibited

I do agree with this rule for the clients but for the staff, this is totally unfair, all staff are adults and having tobacco on their person is no ones business but theirs. It's not an illegal substance, plus, many employees that work for the Department still smoke, just not in the building, what a staff person do outside our building legally is her personal business, DICTATORSHIP!!

3. 3800.211 Manual Restraints

If our agency would have to use manual restraints, we wouldn't want to use this maneuver too long but for another staff person to observe and documentation every 10 minutes is incredible, we would call an ambulance and have the client sent to the Crisis Unit and document just on this occurance, you are making unnecessary burdens on the agency.

4. 3800.212 Exclusion

You are saying that the agency can't send the client to their room for a short period of time unless a staff person if present? What's the use of sending them to their room. I feel that a staff person could check the room first for unsafe objects, then check the room every 5 or 10 minutes thereafter for maybe 1 hour.

Your rules on Manuel Restraints and Exclusion makes it impossible to accept some of the more uncontrollable clients. In the past, our facility has tried to get around accepting these problematic clients, now, we will definitely not accept the more troublesome clients. There is no way of CORRECTING or PUNISHING the client for DELIBERATE WRONG DOING!!

5. 3800.53 DIRECTOR

Our Director has a Bachelor Degree and she also work for another child's agency, an adjusicated delinquent agency (teens on probation - after care). A person with a Master Degree and (2) years experience wouldn't be as beneficial to our agency as she is. The old rule was excellent because any agency will try to get the best qualified person for their facility, it's a plus for them.

6. 3800.56 Supervision

Our supervisor has worked in the public school district for many years surpassing the years of work experience and college equivalence. You evidently don't know much about dealing with these juvenile clients, a degree only shows that they were academically equipped to pass test, that don't mean they know how to handle human circumstances, when a problem arises what will they do, go to a book for references?? We, meaning most agencies need someone who have been involved with children for a while, been through all types of circumstances and not affraid of challenge, this person is priceless, not because a person has a Degree, our agency would rather work with (5) so call unprofessional staff members instead of (2) person with a PHD!! We need a person with more job experience, in a time of a crisis, all agencies need someone who has either been in this perdicament or something simular. Soneone who knows what to do and what could happen. You want someone with a higher degree, what will they do, look the problem up on a certain page that they studied on in college? By this time, the crisis would have escaled to a true tragedy, WAKE UP !!

7. 3800.188 Medications Administration Training

You are saying that the staff person can't be taught or advised by the physician on how to administer medication, you are saying that the person has to be trained or approved by the Department but the client can administer medication to themselves as long as the client is 13 years of age or older? The physician and the druggist will advise, show and give you information on side effects to the medication. The client, in my opinion, tries not to take their medication even when you are administering it, the client already has assured themselves that they don't need the medication, as least in their mind. Now you are telling the agency that the client is more capable to administer the medication than they are.

Remember, this is your rule that we have to adopt so when things go wrong, the parent, who is waiting for something to go wrong, can go after the Department. We've found that most clients don't want to acknowdelge that they need the medication and some go as far as hiding the medicine under their tongue or under their lip, you have to check their mouth at every administering and you are saying that they are responsible enough to administer medication to themselves. Tell me what's the use of the agency locking up the medication? With the client administering the medication, you have to hope they don't save and keep the medication and on their most depressive days, don't over-dose on it. In the case of depression, if they don't take the medication, they will become more and more depressed and we might have a suicide. This rule is a PROBLEM waiting to happen. What is the Department thinking of, ARE WE SAVING MONEY OR SAVING LIVES???????

Supplemental Information from meeting held 4-29-98

#1927

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Sandusky
Legal-2

TALKING POINTS FOR 3800 REGULATIONS

Wendy Luckenbill Parents Involved Network of Pennsylvania 1-800-688-4226 ex 250

1. STAFFING-Requirements for staff need to be specific to the children they are saying they are caring for in a facility/program. I.E. I am presently advocating for the family of a 15 year old girl who has been placed in a Children and Youth Residential Campus with many cottages for 3 years. This youngster was placed there according to court records because she needed to be in a "residential mental health placement". There is no conceivable way this campus of group home could be construed as a residential treatment facility as per Medical Assistance and Mental Health regulations. Furthermore this facility has no licensing as a Residential Treatment Facility. The "mental health treatment" this youngster has received for 3 years has been one half hour a week with a social worker. Not only is this clearly not sufficient treatment to warrant considering that this is a mental health treatment placement, but it is beyond the pale to think that a youngster in need of residential mental health treatment would receive treatment for 3 years without even being open to the county Mental Health program and without receiving 3 month reviews of the treatment required by Medical assistance. These 3 month reviews are required to assess the appropriateness of the treatment and the treatments progress towards reducing the youngsters need for such restrictive placement, always with the goal of returning the child to her home and community. Clearly, this youngster would not benefit by having staffing qualifications become more vague.

2. SERVICE/TREATMENT PLANS
I have advocated within the last 12 months for the family of the family of the family of the family of a 8 year old child who was placed in a Residential Treatment Facility and sat for over one month with no service plan. In this case he was without any educational services for that entire month. He spent his days watching TV and playing Nintendo. He was moved to this facility from a children's shelter where he was for over 30 days waiting for a RTF after discharge from a psychiatric hospital. This delay in delivery of school services seriously compromised the treatment he received at the prior 2 placements, and finally resulted in his total alienation from the staff and facility. It is not appropriate to ask an 8 year old child to live in a static state for a month while we pay for a program the staff cannot deliver.

3. DISCHARGE PLANNING-
I am currently advocating for a the family of 11 year old child who was placed in a residential treatment facility because she was unable to conduct herself in an appropriate and safe manner with in the home and community. the treatment team postulated that the child may benefit from being outside the home and thus able to gain perspective on her behavior. concurrently the family is experiencing a chronic and fatal illness of a parent. The RTF has not provided any family based treatment towards the goal of moving the child home. Additionally, the original presumption that removal from the home would improve her insight has not been realized. So now she is outside the home, there is no plan to move her back and her absence is poignantly inappropriate in that she is living outside the home with very limited contact with the family member who is dying.

4. SECURE CARE
I am currently aware of an 10 year old child who is in a county juvenile detention center awaiting the judges decision about his release. This youngster has a history of economic and environmental deprivation, exposure to a violent but not fatal stabbing of his mother, and accompanying psychiatric diagnosis including depression and ADHD, and aggressive, assaultive behavior towards other children and their possessions. While he has been in the facility he

has been restrained an average of 10 times a day, resulting in extensive bruising. There has been no referral for psychiatric intervention to address these incidents, despite his history, and the recommendation of the judge that this youngster be considered for a mental health residential treatment facility. There needs to be clear and specific standards for the appropriateness of restraints in secure care. Restraints should never be used as a substitute for medical care. It has been my experience that a child from a higher socioeconomic class would have be hospitalized for his acting out behaviors, especially in light of his age and his long-standing diagnosis.

5. BEHAVIORAL INTERVENTIONS
Behavioral interventions need to be appropriate to the needs of the individual child. The youngster in the secure facility discussed above is clearly not receiving effective and appropriate behavioral interventions which are assisting him with his behaviors.

6.E DUCATION
As mentioned above, youngsters sit in residential treatment facilities without provision of education. In one RTF I am familiar with a parent was told her daughter was the first child to ever attend the local public school, despite a DED/DPW policy mandating the placement must be in the local public school if at all possible.

7. SECURE DETENTION

8.CASSP PRINCIPLES
Families are regularly excluded from treatment planning meetings, despite OMHSAS requisite that all children receiving public mental health services be treated in accord with CASSP Principles (Inc. Family focused). Re: the child above- (see # 3), have not participate in treatment planning and their child's behaviors were not interpreted correctly without the families insights, which they were finally able to get heard after months of persistence.

9. CHILDREN'S RIGHTS
It is essential to use this revision of the regulations to INCREASE children's rights, in both kind and specificity. Despite clear regulations against such limitations, children at the Facility in #1 above are forbidden to make any out going calls and are restricted to receiving phone calls only between 3pm and 5pm daily. All calls must be taken with a staff member present, even phone calls between the child and their attorney.

10. CONSENT TO MEDICAL CARE
Families need to be fully informed about their child's medical care. The in # 3 above has an unusual reaction to any sedative medication, yet twice she has been to the emergency room without any contact with the parents, prior to, during, or immediately after her visit. Both times the visits were for broken fingers, which the RTF staff dismissed as normal childhood incidents, however the parent were able to identify these incidents as highly atypical and possibly linked to an increase in the child's physically aggressive behaviors towards herself now that she had been removed from the family where traditionally she had focused her physically aggressive behaviors on her parents. The staff is now treating these behaviors rather than dismissing them and putting her at risk as her self injuring behaviors potentially persisted and increased.

11. WAIVER OF REGULATIONS
As cited in these examples, regulations need to be more stringent not less to ensure children's safety in institutional settings.

12. HEALTH SCREENS
I advocated for a child 2 years ago who was in a Residential Treatment Facility. She was an 13 year old with mild mental retardation and mental health disorders. The facility never diagnosed or treated her impacted colon, despite several requests from the county to provide a menial examination. Instead they persisted in diagnosing her with ecoperisis, which delayed and compromised her treatment.

13. CONFIDENTIALITY is a poorly understood concept by many professionals. In the instance of the child mentioned in # 3 above, her parents specifically amended the confidentiality releases they signed when they admitted their daughter into the RTF.
They specifically denied their school district t of residence to have access to their daughters psychiatric and psychological records without an additional review and release from the parents. Nevertheless, the RTF sent the child's entire Mental Health records to the school at the school's request without notifying the parents. Much of what was contained in these records was not pertinent to the school's provisions of educational services to the child, should she ever return to the district. Regardless, these records were not the RTF's to release. The RTF apologized to the family and explained they have never had a parent not sign a blanket waiver of confidentiality to any agency seeking info on the child and thus had not checked the confidentiality release on record before sending the files to the school. Clearly, confidentiality of a child's records must be safeguarded by the adults who are caring form him.

14. POLICIES AND PROCEDURES MANUALS
Families and children are generally not aware of their rights including grievance rights until they call an advocate, if they realize they can even do this.

CORE PRINCIPLES
Child and Adolescent Service System Program (CASSP)

Pennsylvania's Child and Adolescent Service System Program (CASSP) is based on a well-defined set of principles for mental health services for children and adolescents with or at risk of developing severe emotional disorders and their families. These principles, variously expressed since the beginning of CASSP, can be summarized in six core statements. When services are developed and delivered according to the following principles, it is expected that they will operate simultaneously and not in isolation from each other.

1. **Child-centered**
   Services are planned to meet the individual needs of the child, rather than to fit the child into an existing service. Services consider the child's family and community contexts, are developmentally appropriate and child-specific, and also build on the strengths of the child and family to meet the mental health, social and physical needs of the child.

2. **Family-focused**
   Services recognize that the family is the primary support system for the child. The family participates as a full partner in all stages of the decision-making and treatment planning process, including implementation, monitoring and evaluation. A family may include biological, adoptive and foster parents, siblings, grandparents and other relatives, and other adults who are committed to the child. The development of mental health policy at state and local levels includes family representation.

3. **Community-based**
   Whenever possible, services are delivered in the child's home community, drawing on formal and informal resources to promote the child's successful participation in the community. Community resources include not only mental health professionals and provider agencies, but also social, religious and cultural organizations and other natural community support networks.

4. **Multi-system**
   Services are planned in collaboration with all the child-serving systems involved in the child's life. Representatives from all these systems and the family collaborate to define the goals for the child, develop a service plan, develop the necessary resources to implement the plan, provide appropriate support to the child and family, and evaluate progress.

5. **Culturally competent**
   Culture determines our world view and provides a general design for living and patterns for interpreting reality that are reflected in our behavior. Therefore, services that are culturally competent are provided by individuals who have the skills to recognize and respect the behavior, ideas, attitudes, values, beliefs, customs, language, rituals, ceremonies and practices characteristic of a particular group of people.

   Note: Pennsylvania's cultural competence initiative has focused specifically on African Americans, Latinos, Asian Americans and Native Americans who have historically not received culturally appropriate services.

6. **Least restrictive/least intrusive**
   Services take place in settings that are the most appropriate and natural for the child and family and are the least restrictive and intrusive available to meet the needs of the child and family.

May 15, 1995
PENNSYLVANIA CASSP TRAINING AND TECHNICAL ASSISTANCE INSTITUTE
Building 1, Suite 316, 2001 N. Front St., Harrisburg, PA 17102; (717) or (800) 232-3125

First Edition
January 2, 1997

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

Indicators of the Application of CASSP Principles

The Pennsylvania Child and Adolescent Service System Program (CASSP) is based on a well-defined set of principles for mental health services for children and adolescents with or at risk of developing severe emotional disorders and their families. The application of these principles is expected at all levels of an organization serving children with mental health needs and within all children's mental health functions at the state and local levels. Services delivered according to CASSP principles are child-centered, family-focused, community-based, multi-system, culturally competent and least restrictive/least intrusive.

The Department, in its issuance of the Request for Proposals for the HealthChoices Program, requires adherence to both the CASSP and Community Support Program (CSP-Adult) principles by the county managed care organization (MCO), its subcontractors and any associated provider networks.

In order to gain a better understanding of the manner in which CASSP principles are applied in daily operations, the following list of examples is offered as indicators of the application of the six CASSP principles. CASSP principles also provide the understanding for a sound approach to a Quality Assurance Program. Five areas of application within an agency are addressed: environment, policy and procedures, clinical records, data information and financing. The list provided is suggestive, not exhaustive, and the Office of Mental Health and Substance Abuse Services is interested in receiving feedback from the field.

Child-centered

The Principle:

Services are planned to meet the individual needs of the child, rather than to fit the child into an existing service. Services consider the child's family and community contexts, are developmentally appropriate and child-specific, and also build on the strengths of the child and family to meet the mental health, social and physical needs of the child.

The Indicators:

- Toys, children's literature, furniture for small children, and adolescent literature are available in the waiting rooms and offices.
- Credentialing criteria reflect personnel qualifications indicative of expertise in child and adolescent growth and development and therapeutic interventions, and experience in child-serving systems.
- Assessments include the use of tools that are age- and/or developmentally- appropriate.
- The strengths, interests and resources of the child are identified in assessments, treatment plans and progress notes.
- A treatment plan format with a reading level understandable to a child or adolescent is used and is signed by the child or adolescent.

- An adolescent satisfaction survey is included in consumer satisfaction protocols.
- Adolescents are included in interagency team meetings.
- Data elements collected include child and adolescent factors identified in the performance outcome measures (POMs).
- Financial support is given to the training of staff in child and adolescent clinical specialty areas.

Family-focused

The Principle:

Services recognize that the family is the primary support system for the child. The family participates as a full partner in all stages of the decision-making and treatment planning process, including implementation, monitoring and evaluation. A family may include biological, adoptive and foster parents, siblings, grandparents and other relatives, and other adults who are committed to the child. The development of mental health policy at state and local levels includes family representation.

The Indicators:

- Information for families, including local family support/advocacy organizations, is in the waiting room; for example, the PIN newsletter, *Sharing;* CHADD; Right to Education, etc.
- Parents/guardians participate as team members on treatment teams or any interagency meetings, or records include documentation of efforts to include them.
- Parents/guardians sign the treatment plan after they have been fully involved in its development.
- Personnel work to ensure that appointments are available in the evenings and on weekends and at times convenient for the family.
- The member handbook, which also includes the grievance and appeals procedures, is written in clear and understandable language.
- Personnel ensure that families get copies of the member handbook and understand who to call for help with questions.
- Consumer satisfaction protocols include items specific for families of children and adolescents.
- Families of children and/or adolescents are involved on the agency/management board or a family/community advisory committee to the agency.
- The member handbook indicates that child and adolescent specialists can be requested by the family to provide treatment services for their child.

Community-based

The Principle:

Whenever possible, services are delivered in the child's home community, drawing on formal and informal resources to promote the child's successful participation in the community. Community resources include not only mental health professionals and provider agencies, but also social, religious and cultural organizations and other natural community support networks.

The Indicators:

- Resources within the zip code or within 10 miles are used.
- Local resource pamphlets — such as (but not limited to) the local library, the YMCA or YWCA, Boys and Girls Clubs — are located in service management offices.
- Natural resources are used in each treatment plan, such as school, work, leisure and church activities.
- Orientation to and support for public transportation are available to families.
- The data system tracks the use of local/community resources.
- There is a policy/procedure to reach out families and their children when needed.
- The staff training schedule includes topics on community resources and understanding the community in which the staff works.
- If community-based resources are not available for a family, there is an administrative/financial plan to address the service gap.
- Records of community involvement and participation are maintained

Multi-system

The Principle:

Services are planned in collaboration with all the child-serving systems involved in the child's life. Representatives from all these systems and the family collaborate to define the goals for the child, develop a service plan, develop the necessary resources to implement the plan, provide appropriate support to the child and family, and evaluate progress.

The Indicators:

- Families and, if they choose, an advocate/support person participate in the interagency meeting as members of the team.
- Interagency team meetings are held in a convenient and comfortable room with access to blackboard/newsprint, etc.

- At a minimum, mental health and education personnel are involved in interagency team meetings for children and adolescents who are of school age.
- Child-serving systems and other persons/informal support systems involved with the child are included in the treatment process as documented in telephone calls, conferences and interagency meetings.
- Letters of agreement with each child-serving system are current (for each fiscal year) and include a conflict resolution protocol.
- Procedures are written for convening the interagency team, including when meetings are called, who calls them and who leads them.
- Each child's service plan reflects the contribution of each involved service system.
- The data system reports the cross-system outcome measures as identified in the POMS.
- Individual practitioners/agency/MCO staff are knowledgeable and participate in the county child-serving systems collaborative structure.
- Progress notes reflect a summary of interagency team meetings and attendees, and are distributed to the team.

Culturally competent

The Principle:

Culture determines our world view and provides a general design for living and patterns for interpreting reality that are reflected in our behavior. Therefore, services that are culturally competent are provided by individuals who have the skills to recognize and respect the behavior, ideas, attitudes, values, beliefs, customs, language, rituals, ceremonies and practices characteristic of a particular group of people.

> *Note: Pennsylvania's cultural competence initiative has focused specifically on African Americans, Latinos, Asian Americans and Native Americans who have historically not received culturally appropriate services.*

The Indicators:

- Staff resources, consisting of literature (books, magazines and brochures), video and/or audio tapes, reflect the minority groups the agency serves.
- Waiting rooms and offices have literature reflecting the ethnic groups in the community.
- The schedule of regular staff training includes cultural competency development, and related topics.
- Introductory cultural compentency trainings for staff incorporate the following elements:
  a. overview of cultural diversity
  b. the priniciples of cultural competency development

c. conducting psychiatric and psychological assessments applicable to the individual's cultural context

d. treatment planning appropriate to the individual, family, and cultural context

e. integrating community supports and resources

f. considering and using non-traditional methods and services

g. direct service provision and effectively engaging minorities in treatment

- More advanced trainings involve issues and related topics.
- Service delivery reflects:

a. psychiatric assessments which incorporate an appreciation of the child's or adolescent's culture and level of acculturation

b. treatment plans/consultations which involve or reflect the family's cultural perspective

c. up to date information on medications through current literature/studies on psychotropic medications and how they relate to minority populations

d. recognition of the importance of religion, religious expression and religious institutions

e. services available from clinical staff who speak the language understood by children and families or who use interpreters

f. interagency meetings which welcome extended family members

g. recognition of culturally relevant holidays

h. tracking of completion rate for appointments by ethnicity, age and gender

- Administrative and treatment staff represent the cultural diversity of the community the agency serves.
- Minority members participate at the policy-making and administrative/monitoring levels.
- Advisory boards include minority membership.
- Consumer satisfaction protocols include questions tailored to ethnic communities.

Least restrictive/least intrusive

The Principle:

Services take place in settings that are the most appropriate and natural for the child and family and are the least restrictive and intrusive available to meet the needs of the child and family.

The Indicators:

- Family-friendly consolidation in the scheduling of appointments is apparent so that it is efficient for the family both in time and location.
- The community integration questionnaire is used to ensure the use of least restrictive services.
- In-home, in-school and in-community resources are safely used first before out-of-home placement is considered.
- Justification for each service or placement considered is documented.
- The family has a voice in the process of identifying appropriate staff for various in-home services.

FIRST EDITION
January 2, 1997

SUMMARY OF INCREASED CONSUMER PROTECTIONS IN NEW CHILD RESIDENTIAL AND DAY TREATMENT REGULATIONS

Original: 1927
Copies: Wilmarth
Sandusky
Legal

SEPTEMBER 15, 1998

- New comprehensive requirements 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 Ch. 6400 for mental retardation regulations).

- Use and restriction of restrictive procedures is heavily and specifically regulated including prohibitions of certain manual restraints (a first even for mental retardation regulations), adversives, pressure points, seclusion, and mechanical restraints.

- 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 improved 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 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.

ORIGINAL: 1927
COPIES: Wilmarth
Sandusky
Legal (2)

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

3/2/98

Dear Mr. Gioffre,

I am the parent of a child who has mental retardation as well as some serious emotional problems, who is under twenty-one and who resides in a community group home.
I am very upset to learn that your dept. intends to further reduce the regulations that protect our children who live in these facilities. The regulations that exist are minimal, at best, now.
It is my fear that without regulations that insure that my child has all of the appropriate services that he needs, that he will lose the hard won ground he has. It will further minimize his chances of being able to enjoy independence.
My child and my family have been fortunate to have needed services during a time where following CASSP principles was important in our community. I believe that these regulations undermine those very ideals and will erode them so that future children and families will be in the same place that families were ten years ago. Before CASSP>
Please, I ask you to reconsider these regulations. They are not enough. Our children will pay a very dear price, for many years to come, if you enact these regulations.

Thank-you for your consideration.

Sincerely,
Lorri Young
Lorri Young
Parent

Terry R. Marolt
Commissioner

Richard F. Vidmer
Chairman

Tom Balya
Commissioner

Westmoreland County Pennsylvania

MENTAL HEALTH AND MENTAL RETARDATION PROGRAM
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ORIGINAL: 1927
COPIES: Wilmarth
Sandusky
Legal (2)

M E M O R A N D U M

TO: Robert L. Gioffre

FROM: Michelle Johnson, Mental Health Housing Specialist

DATE: March 12, 1998

RE: Comments on PA Bulletin, Vol. 28, #7, Part IV, 3800 Regs.

Unusual Incidents

.16(a)---Has the 28 PA code § 27.2 (relating to reportable diseases) been updated? Attached for your information.

.16(d)---Reporting to the appropriate Office of Mental Health & Substance Abuse Services regional offices?

---Reporting to the office that oversees the program but does not "fund" the program? I.E. County MH/MR office overseeing a JCAHO (RTF/CRR) facility where treatment & room and board is paid by M.A.

Fire Safety

.121---Are sprinkler systems required to be in place at any specific type of facility?

Behavior Intervention Plan and Services (devel. of ISP)

---Could there be a statement advising the need for the Behavior plan, ISP, psychiatric, psychological, IEP and EPSDT plans to correspond/relate to each other. Many children have all or most of the above mentioned and it is not all that uncommon for none of the plans to correspond or relate to the other.

---Could there be an additional statement regarding ISP's being reviewed at least every 60 days?

---Should the importance of developing and implementing a Transitional (from adolesence to adult) Plan be stated?

Transitional Living

291(1)(2)(3)(4)---What is the level of competency required for eligibility? The skills listed are the skills the individual may be lacking and in need of via the Transitional Living Program.

General Comments/Questions

---Should CASSP and CSP principles be mentioned anywhere? Attached for your information.

---Unclear; With these new regulations can for example a mental health provider be licensed under the Children and Youth Transitional Living regulations and only serve children with a mental health diagnosis who are not known to Children and Youth?

LIST OF REPORTABLE DISEASES

AIDS
Amebiasis
Animal Bites
*Anthrax
*Botulism
Brucellosis
Campylobacteriosis
Cancer
Chlamydia
Trachomatis Infections
*Cholera
*Diphtheria
Encephalitis
*Food Poisoning
Giardiasis
Gonococcal Infections
Guillain-Barre Syndrome
Haemophilus Influenzae
type b disease
Hepatitis, Viral, Including
Type A, Type B, and Type NANB
Kawasaki Disease
Lyme Disease
Malaria
*Measles
*Meningitis-All Types
Meningococcal Disease
Mumps
Pertussis
*Plague
*Poliomyelitis
*Psittacosis
*Rabies
Reye's Syndrome
Rickettsial Diseases, Including
Rocky Mountain Spotted Fever
Rubella and Congenital
Rubella Syndrome
Salmonellosis
Shigellosis
*Syphilis-Infectious
Tetanus
*Toxic Shock Syndrome
Toxoplasmosis
Trichinosis
Tuberculosis
Typhoid
*Yellow Fever

REPORTABLE ADDITIONAL LABORATORY FINDINGS:

Histoplasmosis
Lead Poisoning
Legionnaires' Disease
Leptospirosis
Lymphogranuloma Venereum
Neonatal Hypothyroidism
Phenylketonuria
Tularemia

UNDERLYING VALUES/PRINCIPLES FOR WRAP-AROUND/MA WAIVER SERVICES

It is the position of the Westmoreland County Mental Health Program that services provided to children and their families through the Wrap-around/EPSDT Waiver process be consistent with the principles of the Pennsylvania Child and Adolescent Service System of Care from A System of Care for Severely Emotionally Disturbed Children and Youth. Key among these Principles are:

- services should be child centered with the needs of the child and family dictating the types and mix of services provided.
- services should be community based and provided in the least restrictive, most normative environment that is clinically appropriate for the child and family.
- services should be provided in a manner that is sensitive and responsive to the child and family's cultural differences and special needs.
- parents and children (whenever clinically appropriate) will participate fully in all service planning decisions.

CASSP VALUES AND PRINCIPLES*

A. Core Values of the System of Care

1. The system of care should be child-centered with the needs of the child and family dictating the types and mix of services provided.
2. The system of care should be community-based, with the locus of services as well as management and decision making responsibility resting at the community level.

B. Principles of Services for Children and Adolescents in Pennsylvania

1. Children and adolescents deserve to live and grow in nurturing families.
2. Children and adolescents' needs for security and permanency in family relationships will pervade all planning.
3. The family setting shall be the first focus for treatment for the child or adolescent. Out-of-home placement should be the last alternative.
4. Communities shall develop a rich array of services for children and their families so that alternatives to out-of-home placement are available, such as home-based services, parent support groups, day treatment facilities and crisis centers.

5. Parents and the child will participate fully in all service planning decisions.

6. The uniqueness and dignity of the child or adolescent and her/his family will govern service decisions. Individualized service plans will reflect the child or adolescent's developmental needs which include family, emotional, intellectual, physical and social factors. The older adolescent's right to risk will be considered.

7. The community service systems which are involved with the child and family will participate in and share placement, program, funding and discharge responsibilities.

8. The primary responsibility for the child or adolescent will remain with the family and community. Pre-placement planning will include a discharge plan.

9. Case management will be provided to each child and family to ensure that multiple services are delivered in a coordinated, time-limited and therapeutic manner which meet the needs of child and family.

10. Each child shall have an advocate.

***Developed by the Pennsylvania CASSP Advisory Committee**

CSP PRINCIPLES

Consumer-centered/Consumer-empowered: *Services are organized to meet the needs of each consumer, rather than the needs of the managed care program or needs of service providers. Services incorporate consumer self-help approaches and are provided in a manner that allows persons to retain the greatest possible control over their own lives.*

Culturally Competent: *Culture determines our world view and provides a general design for living and patterns for interpreting reality that are reflected in our behavior. Therefore, services that are culturally competent are designed and delivered to recognize and respect the behavior, ideas, attitudes, values, beliefs, customs, language, rituals, ceremonies and practices of an individual or a particular group of people.*

Flexible: *The development and delivery of services and supports are flexible as possible in order to meet the needs of a wide diversity of persons in the geographic area. Flexibility includes having a wide variety of services of variable intensity available at a wide range of times and delivered in a wide range of environments.*

Meet Special Needs: *Services are adapted to meet the special needs of people with mental illness who are affected by one or more of such factors as old age, substance abuse, physical disability, loss of sight/hearing, mental retardation, homelessness, HIV/AIDS, and involvement in the criminal justice system.*

Accountable: *Service providers are accountable to the users of the services. Consumers and their families are involved in planning, implementing, monitoring and evaluating services.*

Strength-Based: *Services build upon the assets and strengths of consumers to promote growth and movement toward independence.*

Community-Based/Natural Supports: *Services are offered in the least coercive manner and most natural setting possible. Consumers are encouraged to use the natural supports in the community and to integrate into the living, working, learning, and leisure activities of the community.*

Coordinated: *Services and supports are coordinated on both the local system level and on an individual consumer basis in order to reduce fragmentation and to improve efficiency and effectiveness with service delivery. Agencies must work in collaboration to meet the variety of needs that people with psychiatric disabilities have.*

CORE VALUES FOR THE SYSTEM OF CARE**

1. The system of care should be child centered, with the needs of the child and family dictating the types and mix of services provided.

2. The system of care should be community based, with the locus of services as well as management and decision making responsibility resting at the community level.

GUIDING PRINCIPLES FOR THE SYSTEM OF CARE

1. Children with emotional disturbances should have access to a comprehensive array of services that address the child's physical, emotional, social and educational needs.

2. Children with emotional disturbances should receive individualized services in accordance to the unique needs and potentials of each child and guided by an individualized service plan.

3. Children with emotional disturbances should receive services within the least restrictive, most normative environment that is clinically appropriate.

4. The families and surrogate families of children with emotional disturbances should be full participants in all aspects of the planning and delivery of services.

5. Children with emotional disturbances should receive services that are integrated with linkages between child caring agencies and programs and mechanisms for planning, developing and coordinating services.

6. Children with emotional disturbances should be provided with case management or similar mechanisms to ensure that multiple services are delivered in a coordinated

and therapeutic manner and that they can move through the system of services in accordance with their changing needs.

7. Early identification and intervention for children with emotional problems should be promoted by the system of care in order to enhance the likelihood of positive outcomes.

8. Children with emotional disturbances should be ensured smooth transitions to the adult service system as they reach maturity.

9. The rights of children with emotional disturbances should be protected and effective advocacy efforts for children and youth with emotional disturbances should be promoted.

10. Children with emotional disturbances should receive services without regard to race, religion, national origin, sex, sexual orientation, physical disability or behavioral characteristics that result from their emotional disturbance and services should be sensitive and responsive to cultural differences and special needs.

** **Modified from <u>A System of Care for Severely Emotionally Disturbed Children and Youth</u>**

Terry R. Marolt
Commissioner

Richard F. Vidmer
Chairman

Tom Balya
Commissioner

MENTAL HEALTH AND
MENTAL RETARDATION PROGRAM
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TO: Robert L.Gioffre

FROM: Sherry A. Anderson

SUBJECT: Comments on PA.Bulletin,Vol. 28, #7, Part IV, 3800 Regs

DATE: March 13, 1998

3800.16. Unusual Incidents:

(d) The agency that the child is active with should also be notified of an unusual incident-it is not always the same as the funding source.

(f) The facility shall submit a final unusual incident report within ten (10) days unless the investigation requires more time.

3800.57. Staff Training

(c) Suggest that the time span for training be amended to 90 rather than 120 days.

3800.124. Notification of local fire officials.

The notification shall be kept "current"-is it clear that this means yearly or?

3800.141. Child health and safety assessment.

(c) (1) Also include notation about any special dietary factors affecting the child so that any measures that may need to be effected can be if the child is anoretic, bulimic, has pica, etc.

3800.146. Health services.

(b) Medically necessary services needs to also include

psychiatric services. And a certain amount of psychiatric time should be required for RTFs which are treating children with intensive mental health concerns.

3800.184. Medication Log.

A section be added to note the need for blood tests/monitoring of certain psychotropic medications.

3800.203. Behavior intervention procedure plan.

(c) The plan shall be reviewed every 3 months--

3800.222. Review, revision,and rewrite of the ISP.

Revision of the ISP shall be completed every 3 months rather every 6--

3800.223. Content of the ISP.

(1) Measurable and individualized goals....
(5) A section addressing: family involvement in the treatment development, ongoing treatment, and transition home components to assure that families are included throughout the process.

3800.225. Copies of the ISP.

(a) Copies...include agency child is active with e.g. base service unit.

TRANSITIONAL LIVING:

3800.291. Criteria. The required criteria to be eligible for this service appear to be too restrictive. These are the skills that many young adolescents with a history of RTF placements and significant mental health concerns need to acquire by being placed in this service.

Comment/Question: Will these "blended" regulations now open the way for "MH"only youth to access transitional living programs? Will providers be able to operate transition programs for youth under 18 who are not in the OCYS system?

The CASSP and CSP Principles should be referenced as a foundation for providing all types of care.

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3/9/98

REVIEW COMMISSION

Division of Program Planning and

MAR 10 1998

Refer to:

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

Dear Mr. Gioffre,

I am the parent of a child who has both mental health problems and drug dependence problems. She has needed to be in programs to help her with all of her issues several times. I don't know if she will need to again or not.

If my daughter needs to go into a program again, I want to know that it is run both efficiently and with the needs of the children and families in mind. I can't trust that everyone who runs a program has my daughter's best interest at heart. I need to rely on people like you who write the regulations that govern institutions to insure that quality is there.

The regulations that you've written don't do that. They have allot of things about floor space and fire alarms, but nothing about the people who will be working with my daughter and the rest of my family. Your regulations don't even insure that the people who will be treating my daughter communicate with me at all. These are the kind of regulations that let people who want to do a poor job, do it legally.

I am very upset about this. I sincerely hope that you rewrite these regulations in a way that protects and helps our children, not the way you have them now. Now all they do is protect the people who make money off of my daughter's problems.

Thank you,

Rebecca Wasnewski

Rebecca Wasnewski
Parent

VisionQuest
— Lodgemakers —

April 13, 1998

Robert Gioffre, Director
Adoption and Residential Service Unit
Department of Public Welfare
Office of Children, Youth and Families
P.O. Box 2675
Harrisburgh, PA. 17105-2675

FAX TRANSMITTAL

Dear Mr. Gioffre:

Attached please find VisionQuest's comments regarding the proposed 3800 Regulations governing Residential and Day Treatment Services for Children and Youth.

I commend the Department's effort in meeting with providers on several occasions to discuss and clarify the numerous issues that arose in the development of the proposed regulations. Once again I want to thank the Department for the opportunity to participate in the development of the proposed regulations.

Sincerely,

Phyllis W. Yester
Director Quality of Care

VQ - 3800

3800.3 Definitions

Most outdoor programs believe that education and treatment are the primary foci and utilize an outdoor experience to facilitate the delivery of these services.

Re-state *Outdoor program* - A residential program where children sleep outdoors or in structures intended for an outdoor experience; such as, tents, teepees, cabins and quonset huts, where one of the primary foci is utilizing the natural elements and outdoor surroundings during normal daily activities.

3800.16 Unusual Incidents

(a) The increased reporting requirements included in this revision will create a paperwork bureaucracy that will be difficult for the child care agency and the Department to effectively manage. Additionally, the increase in this reporting would require the addition of one administrative staff for each program to process this paperwork to meet the requirements as currently stated in the draft.

(b) VisionQuest supports the reporting of severe or unusual incidents. However, under this definition of an Unusual Incident, youth that sustain injuries as the result of a sporting event or normal childhood illness could result in an Unusual Incident Report.

Recommendation:

1. Change definition of Unusual Incident: death of child; an injury, trauma or illness of a child requiring inpatient treatment at a hospital.
2. Reporting Unusual Incidents: Twenty-four (24) verbal reports to the Department, placing agency and parents/guardian. Agency to conduct thorough investigation and submit written report within three working days.
3. Add a section for Significant Incident: an action taken by a child to commit suicide; an injury, trauma; except those resulting from a sporting event; or illness other than normal childhood diseases, requiring outpatient treatment at a hospital; a violation of a child's rights; intimate sexual contact between children, consensual or otherwise; a child who leaves the premises of the facility for thirty (30) minutes or more without the approval of staff persons; abuse or misuse of a child's funds or property; outbreak of a serious communicable disease as defined in 28 Pa. Code 27.2; an incident requiring the services of the fire or police Departments; any condition which results in closure of the facility.
4. Reporting Significant Incident: The childcare agency will maintain a significant incident log. Based upon approved program policy and procedure, when necessary, the agency will conduct a thorough investigation and maintain a file at the facility. The child's parent/guardian and placing agency will be notified within twenty-four (24) hours of the incident.
5. Additionally, a definition or clarification is requested for the reporting of a violation of a child's rights and intimate sexual contact between children. Would a violation of a child's rights be when they file a grievance or when an investigation determines that the child's rights have been violated? Also the definition for intimate sexual contact is subject to interpretation.

VQ - 3800

3800.32 Specific rights

In one of our initial meetings a discussion focused on a child having the opportunity to visit with family at least every two weeks and what actually was meant by "opportunity". I was comfortable with the definition at the time in terms of this being explained in the program description and agency policy to support the "opportunity" for visits or as indicated in the child's Individual Service Plan. My concern surrounds the fact that it is often difficult for youth involved in a mobile program to participate in family visits.

3800.53 and 3800.54

VisionQuest proposes a one-time grand fathering for those staff members currently employed by the facility in the capacity of a Director or Childcare supervisor. These individuals would be given an exemption, year for year, for work experience in replace of the required educational experience.

3800.57 Staff Training

Childcare facilities should be given the option and be encouraged to have on site staff trainers in fire safety, as this would heighten fire safety awareness at those facilities. The size of the facility should have no bearing.

Re-state (i.) Training in fire safety shall be completed by a fire safety expert or by a staff person trained by a fire safety expert.

3800.121 Unobstructed egress

The regulation should state that the use of electronic devices which delay egress are permitted when the system will deactivate in the event of a fire which would then allow for immediate egress.

3800.132 Fire Drills

Requiring fire drills to be conducted during normal sleeping hours with normal staff patterns will present a significant safety and security risk. Should the Department feel strongly about conducting fire drills during normal sleeping hours (e), the facility should be allowed to have additional staff present, which is excluded by (b).

Recommendation: (e) at least once every six months a fire drill shall be conducted during the bedtime or wake up routine.

VQ - 3800

3800.162 Quantity of food

Facilities must control food costs and cannot be expected to maintain unlimited supplies of food. If the facility is meeting the minimum daily requirements as specified in (a) then re-state (b) - Additional portions of snacks and meals will be distributed equally to the children when available.

3800.188 Medications administration training

Will providers be permitted to submit to the Department a curriculum and training plan that can be considered as an approved course?

3800.204 Unanticipated use

Youth have an initial adjustment period to the unfamiliar surroundings and routines associated with Outdoor or Mobile programs. For some youth, this adjustment may be difficult and evidenced by an increase in those situations that required behavior intervention procedures.

Recommendation: If behavior intervention procedures are used on an unanticipated basis 3800.203 (relating to behavior intervention procedure plan) does not apply until after an initial orientation and assessment period of five (5) weeks has passed and then when behavior intervention procedures are used four times for the same child in any 3 month period.

3800.208 Pressure points

The only effective means of releasing a bite hold is the use of a pressure point.
Re-state - The application of pain through pressure point techniques or pain compliance is prohibited except when attempting the release of a bite hold.

3800.211 Manual restraints

VisionQuest currently utilizes a system whereby a senior administrator is summoned once a restraint reaches the fifteen (15) minute point. The primary responsibilities of the senior administrator is to assess the physical and emotional state of the child, assess the restraint techniques being utilized and attempt to effect the release of the child.

Recommendation: re-stated (d) The position of the manual restraint or the staff person applying a manual restraint, shall be assessed every fifteen (15) minutes by a staff person not applying the restraint and when practical adjust or re-position the staff persons applying the manual restraint. (e) A staff person who is not applying the restraint shall complete observation and documentation of the physical and emotional condition of the

VQ - 3800

child, at least every fifteen (15) minutes the manual restraint is applied. Add (f) - manual restraints that exceed fifteen (15) minutes will be documented and reported as a Significant Incident.

3800.303 Additional requirements for outdoor and mobile programs

(a)(8) Re-state: A map of the area will be available to staff members at the facility.

(a)(9) Re-state: A written anticipated schedule of the dates, times and estimated locations for the next 7 days will be available to staff members and posted at the facility.

(b)(4) There is no one recognized authority or regulatory body associated with specific outdoor activities and the term "recognized source" is to broad and open for interpretation. Training of such individuals needs to be documented according to the agency policies, procedures and safety practices.

Re-state: Staff persons.....shall be trained in the safe practices regarding these activities according to the agencies established policies and procedures.

3800.312 Additional requirements (Day Treatment)

(3) This requirement is more stringent than 3800.54(b) although Day Treatment programs usually deal with children that require less supervision than those in a residential setting do.

Recommendation: Change 3800.312(3) to read the same as 3800.54(b)

(172)

VisionQuest
— Lodgemakers —

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VisionQuest Eastern Regional Office
Fax Transmittal Cover

Fax#_____

VisionQuest National, Ltd.
P.O. Box 447
Exton, Pennsylvania 19341

Telephone: (610) 458-0800
Fax: (610) 458-5684

Division of Program Planning and Development

APR 1 4 1998

Received:
Refer to: _____

To: Bob Gioffre

Fm: Phyllis Yesker

Dte: 4-14-98

Sub: 3800 regulations

Pages w/header: 5

If you have any questions regarding this transmittal, or you are not able to read this transmittal, please call the number listed above.

Original to be mailed:
Yes_____ No_____

VALLEY YOUTH HOUSE

Reply to:

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☐ 60 W. Broad Street, Suite 99, Bethlehem, PA 18018 (610) 954-9561 - Fax (610) 954-5944
☐ 539 Eighth Avenue, Bethlehem, PA 18018 (610) 691-1200 - Fax (610) 882-1068
☐ 524 Walnut Street, Allentown, PA 18101 (610) 432-6481 - Fax (610) 432-6648
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David Gilgoff, Ph.D.
Executive Director

March 9, 1998

Joseph L. Spear
Department of Public Welfare
P.O. Box 2615
Harrisburg, PA 17105-2675

Dear Mr. Spear:

I am writing for the purpose of providing comment regarding the proposed changes to the Child Residential and Day Treatment Regulations as published in the Pennsylvania Bulletin (Vol. 28, No. 8).

Overall, the changes are positive and will have, I believe, a positive impact, for youth serving agencies providing residential care. There are, however, two (2) sections which appear to be somewhat problematic.

Within the Transitional Living (3800.291-3800.293) section the eligibility requirement states "to be eligible to live in a transitional living residence, the child must have completed a Department approved training program and demonstrate competency in the following areas: In providing Independent Living services to adolescents since 1978 it has clearly been our experience and observation that to require demonstrated competence before entry into a TLP eliminates the need for the TLP since the demonstrated competencies already qualifies the person for independent or unsupervised living. As provided in federal transitional living programs, the competencies are acquired as part of the program, not as a prerequisite to it.

Furthermore, many youth already possess the competencies and are assessed as part of the intake referral and screening process. To require those youth to complete a Department approved training program introduces an unusual time needless educational process and additional expense into the process for many youth, and delays a placement agency's immediate need for placement of appropriate youth.

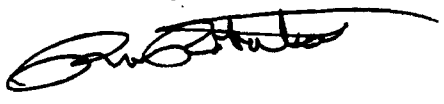
I would consider changing the regulation of eligibility to one of demonstrating competencies to the licensed TLP's as part of their acceptance process. As such, a TLP would be unlikely to accept an ill-prepared youth and would be required to enhance those skills as a fundamental basis for retaining such youth within their program.

The second area in which to consider modification of the proposed regulations is within the Unusual Incident (3800.16) section. Considering the number of youth often present in the variety of residential settings, a requirement that mandates the reporting of a child who leaves the premises of a facility for 30 minutes or more without approval will surely prove to be burdensome to residential organizations. A practical solution would be to require residential organizations to document such unapproved absences within a client record after 30 minutes and include measures that were taken to locate and return such clients. Any youth absent without permission for more than 12 or more hours must then have an Unusual Incident report completed.

The organization's site licensing process could review all unexcused absences greater that 30 minutes as part of the relicensing process to assure organizations have clear protocols to document and respond to unapproved absenses and that they, in fact, did so.

Thank you for considering these comments of the new regulations. As stated before, I believe the proposed rewritten regulations indicate an excellent effort at consolidating residential regulations in a thoughtful and responsible manner.

Sincerely,



Robert M. Robertson, Jr.
Associate Executive Director

c/rrlet12/jc

(26)

THE LEHMAN CENTER

A PROGRAM OF CHILDREN'S AID SOCIETY
Southern Pa. District - Church of the Brethren

400 W. Market St., York, PA 17404
(717) 845-5771 Hot Line...1-800-635-6619
FAX (717) 852-7605

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Division of Program Planning and Development

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MAR 1 2 1998

Received:
Refer to: _____

March 11, 1998

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

Dear Mr. Gioffre:

Thank you for the opportunity to make comments regarding the proposed amendments to Chapter 3800 of the Public Welfare code.

My first comment has to do with Section 3800.57 Staff training. Item (g) states that each person having direct contact with the children shall complete training in first aid at least every year. The Red Cross provides the training for our staff in first aid and CPR. While the Red Cross requires annual refresher training to maintain CPR certification, their certification for first aid training is for three years. If we are required to provide annual first aid training for our staff this will be a significant increase in our training costs.

My second comment relates to Section 3800.103 Bathrooms. Item (i) lists specific toiletry items that shall be provided for each child. Does this mean that each child must have their own individual items? I understand why each child is required to have their own toothbrush, hairbrush, comb, deodorant and soap, but question the need for individual tubes of toothpaste and shampoos. Our facility is a crisis nursery for children from birth through age six. Children are sheltered here on a temporary basis - usually no longer than 3 days at a time. Providing each child with their own toothpaste and shampoo could be quite costly for us.

Thirdly, I am concerned about Section 3800.106 Water areas. We have an outdoor, fenced play area at our facility. In the summertime, we provide a plastic children's wading pool in this area for the children. Item (c) states that a certified lifeguard shall be present when children are using water areas. Will this also apply to our wading pool? If so, we will be forced to discontinue this practice. All of our staff are trained in adult

and child/infant CPR. This training is refreshed annually. I believe this should be adequate to ensure the children's safety in this setting.

Finally, I would like to inquire as to whether or not waivers to the regulations that were previously granted will still be in effect.

Thank you for your attention and consideration of these issues.

Sincerely,

Sherry K. Fair
Director

The United Methodist Home for Children and Family Services, Inc.
5120 Simpson Ferry Road, Mechanicsburg, PA 17055
(717) 766-7652 Fax (717) 766-5828

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March 31, 1998

APR 07 1998

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 United Methodist Home for Children and Family Services, Inc. is a private, non-profit agency that provides residential treatment and care for emotionally troubled children and adolescents. The Children's Home currently operates a 31 bed long-term residential care program (not an RTF). As such, we are a small business with approximately sixty full and part-time employees.

We have again reviewed the proposed Chapter 3800 Regulations for Child Residential and Day Treatment Facilities. We have serious concerns regarding the impact these proposed regulations will create on the quality of services provided to children as well as the direct fiscal impact on providers such as us. We will have no choice but to pass costs on to the agencies with whom we contract. As all entities are attempting to keep costs within reasonable limits, we hope that the Department will be sensitive to this reality.

We are aware that the Department is attempting to create one set of regulations for several populations of clients with diverse needs. We are concerned that in this process, our clients will be overly restricted and our program will be over-regulated. The proposed regulations infringe on our efforts to normalize our clients, especially our bright, motivated clients who are actively seeking help to make changes in their lives. These clients will be penalized with this generalized approach to regulate all residential and day treatment programs with one set of regulations. The proposed regulations infringe on our attempts to "normalize" our clients and maintain a community-based residential program. Maintaining a safe environment within our treatment units is our primary concern. In some ways these regulations may compromise the safety of our clients and staff. In the process, the changes created by these regulations could also ultimately impact our positive community relationships and program integrity.

Department approved training courses are mentioned throughout the Chapter 3800 proposed regulations. As a provider agency, we are asking that any Department approved

training course be available prior to the implementation of the new regulations. An adequate period of time will be necessary to inform providers regarding specific approved training courses such that we could come into compliance quickly and as efficiently as possible. Notwithstanding, there will be a fiscal impact to virtually all providers who will be under greater pressure to train new staff before allowing them to work alone with clients. Also, with regard to training, the requirement for training volunteers in the manner described in the regulations will also add to the fiscal impact for our agency. On our statement regarding the fiscal impact for our agency, we only factored the training costs. We did not calculate the loss to our agency if volunteers are discouraged from participating in our program due to the more rigorous training expectations proposed. To a small business such as ours, this loss could be devastating.

We would ask that a grandfathering period be provided for existing staff who may not meet the proposed educational requirements for directors and supervisors. We also would ask that the current Chapter 3810 regulations' educational/experience requirement be maintained and not reduced for direct care staff, as proposed in the Chapter 3800 regulations. We are currently dealing with challenging and frequently difficult young people in our residential settings. It makes no sense to require less education for the people who must work directly with these young people day to day.

There is a dramatic increase in paperwork and case management tasks outlined in the Chapter 3800 regulations. This increase in documentation in terms of planning and reporting will not only take time away from the direct care and work with the children, but will also add to the cost of the program. Specific projections regarding the fiscal impact on our agency are noted in Appendix A. Contrary to the assertion in the section entitled, *Paperwork Requirements,* on page 958 of Pennsylvania Bulletin, Vol. 28, No. 7, February 14, 1998 that "paperwork will be significantly reduced", is the fact that not only will it be greatly increased, but it will significantly increase our costs.

Additionally, the great emphasis on behavior intervention plans and procedures, unusual incidents, limitations on the frequency and duration of exclusion will significantly impact our program. Our staff members work very hard to provide ethical care, behavior management, counseling, and treatment for the clients we serve. While the clients and their families present many challenging and often difficult behaviors, we attempt to provide the highest quality of services possible to meet their many needs. The proposed regulations will make a difficult job even more challenging and, potentially, less effective if passed as currently proposed.

Please take the time to read the following pages that outline, in detail, the concerns we have with the proposed regulations. Please note that there is recommended change language that accompanies each area. Be aware that I have included a separate document (Appendix A) that outlines the projected fiscal impact on our agency.

Thank you in advance for your thoughtful consideration of these concerns. Please feel free to contact me with any questions you may have in this regard. We are hopeful that the Department will thoroughly review all comments and take into consideration the

impact these proposed regulations will have on the children of Pennsylvania and the service providers who are diligently working to meet the needs of our children and youth.

Sincerely,

Brenda Souders Loyd, M.S.
Residential Program Director

enclosures

Chapter 3800 Proposed Regulations
Suggested Revisions
3/27/98

3800.2 (g)This section delineates those entities that are not governed by these regulations. The child residential and child day treatment facilities operated directly by the Department {3800.2 (g) (1)}, residential children's schools which are licensed and operated solely as private academic schools or registered and operated solely as nonpublic nonlicensed schools by the Department of Education {3800.2 (g) (4)}, and drug and alcohol residential facilities who provide care to children, that are licensed under 28 Pa. Code Chapters 701, 704, and 709 (relating to general provisions staffing requirements for drug and alcohol treatment facilities; and standards for licensure of freestanding treatment facilities) {3800.2 (g) (9)} are currently exempted from applicability. These entities provide care and services to many children and should be held accountable to the same standards as other providers. Recommended change language is as follows:

3800.2 **Applicability.**

3800.2 (g) This chapter does not apply to the following:

(1) Transitional living residences which are located in freestanding private residences.
(2) Residential camps for children who are enrolled in a grade or educational level higher than kindergarten which operate for fewer than 90 days per year.
(3) Foster care homes that are licensed in accordance with Chapter 3700 (relating to foster family care agency).
(4) Family living homes for children with mental retardation that are licensed under Chapter 6500 (relating to family living homes).
(5) Community homes for individuals with mental retardation who provide care to both children and adults in the same facility and that are licensed under Chapter 6400 (relating to community homes for individuals with mental retardation).
(6) Community residences for individuals with mental illness who provide care to both children and adults in the same facility or community residential host homes for individuals with mental illness that are certified under Chapter 5310 (relating to community residential rehabilitation services for the mentally ill).
(7) Child day care facilities certified or registered in accordance with Chapter 3270. 3280 or 3290 (relating to child day care centers; group child day care; and family child day care).
(8) Private homes of persons providing care to a relative, except for children who are not living with a relative and who have their own children unless the home is a transitional living residence that is exempt from this chapter under paragraph (2).

3800.16 This section of the regulations will tremendously increase the amount of paperwork generated by every facility licensed under this chapter. In our agency alone, with the expanded definition of Unusual Incident, our production of Unusual Incident Reports will

increase from approximately five per year to upwards of 300 per year. Every outpatient visit to the hospital/doctor, every runaway incident longer than 30 minutes, and actions taken by a child to commit suicide, for example, would require two Unusual Incident Reports and case management services to thoroughly document the incident, the communication to appropriate parties, and the investigation of the incident. Our agency currently documents such occurrences and communicates to parents and referring agencies when such activities occur. We believe that this internal documentation is adequate and that, in serious situations, further documentation to the Department is warranted. The bulk of the activities listed under Unusual Incidents can be handled within the Incident Record. There is a significant fiscal impact to our agency if these regulations are published in their current state. The increase in case management services will detract from time spent in direct care and contact with our clients. Appropriate change language is noted below while the fiscal impact is noted in Appendix A.

3800.17 **Unusual Incidents.**

(a) An unusual incident is a death of a child; an injury, trauma or illness of a child requiring inpatient treatment at a hospital; intimate sexual contact between children, consensual or otherwise; outbreak of a serious communicable disease as defined in 28 PA. Code # 27.2 (relating to reportable diseases); an emergency incident requiring the services of the fire or police departments; and any condition which results in closure of the facility.

(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 and the funding agency by the conclusion of the next working day.

3800.17 **Incident record.**

The facility shall maintain a record of all medication errors; seizures; an action taken by a child to commit suicide; suicidal gestures; property damage of more than $500; a child who leaves the premises without the approval of staff persons; a violation of a child's rights; an assault on a staff person by a child that requires medical treatment for the staff person; abuse or misuse of a child's funds or property; an incident (not an emergency) requiring the services of the fire or police; and, injuries, traumas and illnesses of children that do not require inpatient hospitalization, which occur at the facility.

3800.54 (b) It is important that direct care staff have access to supervisory staff, especially in times of emergency. More often than not, emergency situations can be managed by direct care staff in consultation with supervisory staff. Thus, our supervisory staff currently utilize a beeper and cell phones to remain available to the direct care staff. We also have a back-up system of supervisors to respond to emergencies if the need is presented. We recommend that this regulation be changed as noted below:

3800.54 (b) **Child care supervisor.**

(b) For facilities serving 24 or more children, whenever 24 or more children are present at the facility during awake hours, there shall be at least one child care supervisor available and readily accessible to the facility at all times.

3800.55 At present, 50% of our direct care staff must have at least 2 years of college or 2 years of experience working with children, or an equivalent of the two. Considering the problems the children experience who are in care, it seems imperative to maintain this standard. The proposed regulations sanction a high school/GED level of education for direct care workers. We believe that some of the other 3800 regulations will make direct care work even more challenging and stressful, with regard to implementing complex behavior management plans and managing the very difficult behavior of our clients. We believe that we should work together to give direct care staff higher status, not reduce their collective status by lowering educational and experiential standards. The educational and experience requirements of the 3810 regulations should be maintained. Appropriate change language for this section should read:

3800.55 **Child care worker.**

(g) At least 50% of direct care staff shall have at least two years of college or two years of experience working with children, or an equivalent of the two.

3800.56 The health and safety needs of the children entrusted to our care is most important. Also of great importance is the need to create as normal an environment as possible in this residential setting. While it is important to be vigilant in our supervision of the children, we believe we should not be intrusive beyond what is prudent to meet their health and safety needs. Thus, we believe that hourly observational checks around the clock, minimally through the first six months of any child's placement, is intrusive and detracts in our efforts to normalize this setting. Change language is noted below.

3800.56 **Supervision.**

(a) While children are at the facility, children shall be supervised during awake and sleeping hours by conducting observational checks which includes actual viewing of each child based on the specific needs, treatment plan and health and safety assessment of each child.

(d) The requirements in subsections (a) - (c) regarding supervision of children during sleeping hours do not apply if the facility serves 12 or fewer children and one of the following is met:

(1) Each of the children have lived at any facility for at least six months and each child's health and safety assessment indicates there are no high risk behaviors during sleeping hours.

3800.57 The training requirements for new staff and volunteers poses serious concerns for a small agency such as ours. We will be hard pressed to provide 30 hours of the specific components of training stated in this section within the timelines as stated in the proposed regulations. When we must hire a direct care worker, it is important to integrate that worker into the treatment unit as quickly as possible. To comply with this regulation and fill our staffing needs in each unit, we would need to supply all the components of this section approximately 48 times per year, doubling our costs associated with orientation and initial training.

We rely on a large number of volunteers to augment our treatment program. The increase in specific aspects of training and orientation expectations for volunteers would significantly increase our costs each year. The fiscal impact to our agency is listed in Appendix A. Change language for this section of the proposed regulations is noted below.

3800.57 **Staff training.**

(a) Prior to working with children, each staff person who will have direct contact with children, including part-time and temporary staff persons, shall have an orientation to their specific duties and responsibilities and the policies and procedures of the facility, including unusual incident reporting, discipline, care and management of children, medications administration and use of crisis intervention procedure.

(b) Prior to working alone with children and within 30 calendar days after date of hire, each full-time staff person who will have direct contact with children and the director, shall have at least 20 hours of training to include at least the following areas:
   (1) The requirements of this chapter.
   (2) The Child Protective Services Law, 23 PA. C.S. ## 6301 - 6385.
   (3) Fire safety.
   (4) Crisis intervention and suicide prevention.
   (5) Health issues affecting the population.

In addition to the orientation of staff required in subsection (b) the facility shall provide, within the first six months of employment 40 hours of training to newly employed staff identified in 3800.57 subsection (a). This training shall include:

(1) First aid, Heimlich techniques and cardiopulmonary resuscitation.
(2) Principles and practice of child care.

3800.83 Providing protective radiator covers in the living units of our facility will result in excessive costs to our agency. To date, we have had only one incident in which a client touched a radiator that was hot enough to create a small red mark. This burn was treated with antibiotic ointment and an bandaid. The costs to our agency to come into compliance with the proposed regulations will be approximately $32,000.00. We believe this regulation may be important for the health and safety of very young children, under the age of six. However, we feel that it is excessive for our agency, considering the age and capabilities of our clients. Appropriate change language is listed below:

3800.83 **Heat sources.**

Heat sources, such as hot water pipes, fixed space heaters, and hot water heaters exceeding 120 degrees F that are accessible to children, shall be equipped with protective guards or insulation to prevent children from coming into contact with the heat source.

3800.129 Each of our residential units has a large working fireplace in the living room. We have used these fireplaces for the past 81 years without serious incident. Clients are not permitted to tend to the fires unless they are directly supervised by staff. Our clients enjoy the warmth and beauty offered by the fireplaces. Health and safety needs are our top priority in this regard. We feel the 3810 regulations provide adequate guidelines to regulate the use of fireplaces in our units. The change language is listed below:

3800.129 **Fireplaces.**

Fireplaces shall be securely screened or equipped with protective guards while in use. Staff and children shall be instructed in appropriate safety procedures.

3800.201 - 213 The section on behavior intervention procedures presents several concerns regarding the safety of the client who is in a crisis state, as well as the safety of remaining clients and staff. When a client's behavior is disruptive to the point of endangering self or others, it is imperative for staff to respond quickly and carefully. Every intervention requires proactive thought and effort to deescalate the situation and provide security and safety to the disruptive client and all individuals within the unit. Current practice rightfully allows for the safety of clients and staff as primary concerns when behavior interventions (such as manual restraints and exclusion) are indicated to deescalate a crisis. Time limitations, frequency limitations, and excessive pre- and post-documentation all serve to increase difficulties in our efforts to maintain a safe environment for everyone within the unit.

The development of detailed individualized plans for every behavior intervention will add cumbersome restrictions in our effort to successfully manage disruptive behavior. Many of our current clients require multiple interventions at various levels of intensity every

day. The vast majority of our clients are oppositional, with a medical diagnosis supporting this behavioral description. More often than not, it is because of this tendency that the client is placed within our agency. Obtaining the client's agreement to any behavioral intervention is a contradiction in terms at the onset of treatment. It is not a stretch of the imagination to think that some of our clients may require a court order to agree to particular behavior interventions. Additionally, many of the parents with whom we work will also balk at the use of behavioral interventions such as manual restraints and exclusion. Working through such opposition may be futile in some instances and may result our inability to work with some clients. The requirement of numerous written intervention plans in advance, and signed by clients and parents, will likely compromise the safety of the client, the other clients in the unit, the staff who work in the unit, program integrity, and community safety.

Section 3800.211 presents major concerns for us from the standpoint of client safety and staff safety. Section (d) requires that a staff person change positions every ten minutes during a physical holding. Studies have shown that nearly 90% of injuries to clients and staff occur before the staff person has gained an effective hold on the out-of-control client. Item (d) would require a staff person to release a hold for the purpose of gaining a new hold every ten minutes. This places the agitated, angry client and staff in much more risk compared to maintaining a client in a safe and effective hold until the client regains self-control. In addition, many staff lack the physical strength and endurance to hold a client, release them, gain a new hold, release again, etc. In effect, this regulation will likely contribute to injuries for clients and staff, rather than diminish injuries.

Section (e) within 3800.211 requires that a staff person who is not involved in the holding document the client's physical and mental condition every ten minutes. On the surface this expectation seems to be a reasonable requirement. However, 3800.55 (a) requires that only one staff person be on duty at our agency for every eight residents. Who, then, will create the documentation required in this section when only one staff person is on duty? There are many situations where an uninvolved staff person can not be present to provide this documentation.

Section 3800.212 (c)This section may present many difficulties for our agency. As has been stated, many of our clients require multiple interventions on a daily basis. A short exclusion period (usually less than four or five minutes) is often necessary to help a client regain control and composure before a physical intervention may be needed. Such a procedure would likely be a common part of many of our behavior interventions. According to the proposed regulations, a client could be excluded for one 60-minute period but not for five two-minute periods in a given day. Such a requirement is counterproductive to teaching a client to calm him- or herself in a variety of situations. This regulation unnecessarily complicates staff treatment and intervention planning.

It is our opinion that section (c) be omitted completely. There is an extensive body of knowledge that verifies that short term exclusion, when used properly, is a highly effective behavior modification tool. On the other hand, a 60-minute exclusion, according to the bulk of the literature we have reviewed, has never been promoted as

an acceptable intervention in and of itself. The committee should refrain from micromanaging the use of interventions. Appropriate change language is noted below:

3800.202 **Appropriate use of behavior intervention procedures.**

(b) A behavior intervention procedure, with the exception of exclusion as specified in 3800.212 (relating to exclusion), may be used only to prevent a child from injuring himself, injuring others, or destruction of property.

3800.203 **Behavior intervention procedure plan.**

Agencies are responsible to develop a written description of the typical behavior intervention procedure plans that are acceptable for use at the agency. This written description should be incorporated in the agency's Individual Service Plan and subsequent amendments every six months. The client, parent, guardian or custodian if available, child care staff persons, funding agency representative and other appropriate professionals shall review, sign, and date the plan and all revisions to it, at least every six months.

3800.204 **Unanticipated use.**

If behavior intervention procedures are used on an unanticipated basis, 3800.203 (relating to behavior intervention plan) does not apply until after a behavior intervention procedure is used eight times for the same child in any three month period.

3800.208 **Pressure Points.**

The application of pain through pressure point techniques or pain compliance is prohibited except to release a bite.

3800.211 **Manual restraints.**

(d) The position of the manual restraint or the staff person applying a manual restraint, shall be changed as needed to insure the safety of the child and staff person involved.

(e) The staff person who is applying the manual restraint shall complete observation and documentation of the physical and emotional condition of the child as well as an internal agency incident report at the conclusion of the restraint. Whenever possible, a staff person who is available to observe will also document the physical and emotional condition of the child during the restraint; this staff member will also complete an incident report at the conclusion of the restraint.

3800.212 **Exclusion.**

(a) Exclusion is the temporary removal of a child from the child's immediate environment and restricting the child alone to a room or area. If a staff person remains in the exclusion area with the child, it is not exclusion.

(b) A staff person shall observe a child in exclusion at least every five minutes.

(c) A room or area used for exclusion shall have the following:
(1) At least 40 square feet of indoor floor space.
(2) A minimum ceiling height of seven feet.
(3) An open door or a window for observation.
(4) Lighting and ventilation.
(5) Absence of any items that might injure a child.

APPENDIX A
Chapter 3800 Proposed Regulations
Fiscal Impact
The United Methodist Home for Children and Family Services, Inc.
The Mechanicsburg Children's Home

Case Management Services

Unusual Incident Report Documentation	$ 6000.00
Behavior Intervention Plans	2880.00
Training Documentation	1000.00
Fire Drill Documentation	1000.00
	10880.00

Training

Volunteers	$ 1600.00
First Aid/CPR	500.00
Fire Safety	900.00
Safe Physical Management	1200.00
Medication Training	520.00
	4720.00

Staff Physicals	$ 3200.00
Radiator Covers	$34,500.00
TOTAL PROJECTED COST	**$53,300.00**

Outside In School

of

EXPERIENTIAL EDUCATION, Inc.

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COPIES: Wilmarth
Sandusky
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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

Youth Services Alliance of Pennsylvania

P.O. Box 500, Pipersville, Pennsylvania 18947

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Sandusky
Legal (2)

March 12, 1998

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

Re: Comments on the 3800 Regulations Published in the Pennsylvania Bulletin dated February 14, 1998

Dear Mr. Gioffre,

This letter is to comment on the 3800 Regulations Published in the Pennsylvania Bulletin dated February 14, 1998. I had the opportunity to view these regulations in draft form and am well aware of the efforts you have made to respond to input from provider agencies. It is extremely difficult, if not impossible, to develop one set of regulations to govern the vast and differing needs of programs that serve children and youth. I personally feel day treatment programs need to be recognized for the diversity in program design and function and have made specific reference in many cases to the sections in the 3800 regulations as they would apply to day treatment facilities. Many of my comments are really directed toward the amount of increased paperwork the regulations create which will take away from time that is spent on direct service to children. No one questions the need to maintain the health, safety and welfare of children but regulations should be provided as overall guidelines, not attempt to cover every possible situation.

3800.16 Unusual Incidents

•The phrase "action taken by a child to commit suicide" is too broad. It could be interpreted to mean gestures, statements or threats which would result in a flood of paperwork requirements. Children may say things in anger but have no intentions of acting on those statements. Staff seriously explore threatening statements or gestures but this should not require a report to the Department.

RECOMMENDED REWORDING: "action taken by a child to commit suicide requiring inpatient treatment".

•The phrase "an injury, trauma or illness of a child requiring inpatient or outpatient treatment at a hospital" is too broad. Facilities err on the side of caution and use the local hospital for sprains, cuts or any ailment that requires medical services. Please remember that many facilities, particularly day treatment sites, do not have medical staff on site and must rely on the local hospital. This will result in more reporting than is necessary. Judgement needs to be allowed to determine if an incident of injury is serious enough to warrant an unusual incident report.

RECOMMENDED REWORDING: "a serious injury, trauma or illness of a child requiring inpatient treatment".

•The phrase "a child who leave the premises of the facility for 30 minutes or more without the approval of staff persons" is too broad. The current wording will result in a flood of paperwork requirements. A child may leave a day treatment setting, for example, and return within hours or the next day. This can often be true in other facilities where a child leaves for a period of time and then returns. Runaways tend to go home to their families and the facility learns where the child is and makes arrangements for the child's return - all of which cannot be accomplished in 30 minutes. Also note that staff rarely give approval for children to leave a facility except under normal circumstances of jobs and home passes. Facilities make decisions on how to handle the situation where a child leaves a facility based on the perceived danger or risk to the child and the child's individual situation. Judgement needs to be allowed to determine the seriousness of the situation so that truly only unusual incidents where the child is in danger and his whereabouts are unknown are reported.

RECOMMENDED REWORDING: "a child who leaves the premises of the facility, does not return within 24 hours and staff is unaware of his whereabouts.

•The phrase "an incident requiring the services of the fire or police Departments" is too broad and will result in many reports of not so unusual incidents. This could mean a report when a child leaves the facility but returns within minutes or hours as well as a false fire alarm pull by a child.

RECOMMENDED REWORDING: an incident requiring the services of the fire or police Departments where there is damage to a facility or a child suffers a serious injury requiring inpatient treatment.

3800.17 Incident record

This section is redundant. Copies of unusual incident reports must already be kept (see Section 3800.16 (g) and a medication log including errors and reactions must already be kept (see Sections 3800.184, 3800.185 and 3800.186). The language in this section is covered in the unusual incidents section and is too broad for the reasons I commented above. There is no need for a duplicate set of record keeping nor a reason to say twice that the documentation must be kept.

RECOMMENDATION: Delete this section. It's already covered in several other sections.

3800.53 Director

In reference to subsection (c) regarding the degree requirements, no provision has been made for individuals who currently hold these positions but do not meet the degree requirements. While one cannot discount the importance of education it is important to recognize that some programs have promoted individuals to supervisory positions who have no formal degree but who do have years of experience. One generally becomes a director because he or she has shown himself to be appropriate for a supervisory position by his actions in handling clients and staff. Those experiences are as valuable as a degreed education and some people will lose their jobs because of the wording of this section. The recommended additional wording would allow people to remain in their current positions, but not advance within the same facility nor move to another agency in the same position without complying with the educational requirements.

RECOMMENDED ADDITIONAL WORDING AS (c) (3): Directors who were hired prior to the date of implementation of these regulations need not comply with the specific qualifications listed in (c) (1) or (c) (2) as long as they remain in their current employment. If the director changes employment, either within the facility or to another facility, after the date of implementation of these regulations, the requirements listed in (c) (1) or (c) (2) apply.

3800.54 Child care supervisor

In reference to subsection (d) regarding the degree requirements, no provision has been made for individuals who currently hold these positions but do not meet the degree requirements. While one cannot discount the importance of education it is important to recognize that some programs have promoted individuals to a supervisory position who have no formal degree but who do have years of experience. One generally becomes a supervisor because he or she has shown himself to be appropriate for a supervisory position by his actions in handling clients and staff. Those experiences are as valuable as a degreed education and some people will lose their jobs because of the wording of this section. The recommended additional wording would allow people to remain in their current positions, but not advance within the same facility nor move to another agency in the same position without complying with the educational requirements.

RECOMMENDED ADDITIONAL WORDING AS (d) (3): Child care supervisors who were hired prior to the date of implementation of these regulations need not comply with the specific qualifications listed in (d) (1) or (c) (2) as long as they remain in their current employment. If the child care supervisor changes employment, either within the facility or to another facility, after the date of implementation of these regulations, the requirements listed in (d) (1) or (c) (2) apply.

3800.57 Staff training

In subsections (e) the phrase "including the director" should be removed as it is redundant. If the director has direct contact with children then the requirements of the section apply. If the director does not have contact with children his training hours are better spent on supervisory, management and personnel issues. It is not practical for a director to be involved in continuing training on the initial requirements as listed in (b). As part of his job responsibilities he will need to insure that all

staff comply with these initial requirements so there will be continual overview by the director of the content of these areas to ensure that staff have the most current training.

RECOMMENDED REWORDING: (e) After initial training, each full-time staff person, who will have direct contract with children, shall have at least 40 hours of training annually relating to the care and management of children. This requirement for annual training does not apply for the initial year of employment.

3800.103 Bathrooms

I suspect this is a misprint. Currently as it is written, day treatment facilities must comply with subsection (f) "one wall mirror for every six children" and subsection (i) "toiletry items shall be provided for each child". I believe these sections were overlooked in being marked as exceptions for day treatment in Section 3800.311 because one mirror for six children in a day treatment setting is overkill and toiletry items are not even necessary in a day treatment setting.

RECOMMENDED REWORDING: Section 3800.311 (exceptions for day treatment) (8) Sections 3800.103 (relating to bathrooms).

3800.125 Flammable and combustible material

A definition is needed of flammable and combustible materials because paper is such a material and is frequently used by children. Also, day treatment facilities have vocational programs where as part of photography class and art class children come into contact with flammable materials.

RECOMMENDED REWORDING for subsection (b) Flammable materials shall be used safely and stored away from heat sources.

3800.143 Child physical examination

This section should be listed as an exception for day treatment in Section 3800.311. Day treatment programs should be allowed to utilize the mechanism in place whereby medical records are obtained from the child's home school and the public school nurse monitors the health of the children in day treatment by following the requirements for physicals as determined by school law. Day treatment programs are for children who typically live in their own homes and are unable to function in a traditional school setting. The goal is to return the child to the public school setting. Day treatment programs use the local public school nurse to provide health monitoring as required by school law. It is not reasonable to require day treatment programs to be more stringent than public schools. Day treatment programs do not staff medical personnel. Clients enter and leave the program frequently. There is no mechanism which requires parents to comply with obtaining and/or paying for a physical nor will most children comply with the requirement of an unclothed physical examination with a doctor they do not know. Section 3800.242 already has the requirement that the child's record shall contain physical examinations. If the Department feels it's necessary to tell facilities in the 3800 regulations to obtain the medical records from the child's home school, which I point out is already required of day treatment facilities by school law, then I

suggest that Section 3800.312 (additional requirements) could include a subsection that says "Within 15 days the facility shall request the child's medical records to include copies of physicals as required by school law.

RECOMMENDATION: Section 3800.311 (exceptions for day treatment) should include Section 3800.143 (relating to child physical examination).

3800.145 Tobacco prohibited

Language regarding use or possession by staff needs to be addressed. Staff persons are of legal age to utilize and possess tobacco products. The Department cannot presume to infringe upon that right. Staff may use tobacco products on their way to work and leave them in their cars which are parked on facility premises. Many facilities have designated areas for staff in which to smoke away from the children. It is reasonable to require that use by staff be prohibited in a facility.

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

3800.164 Withholding or forcing of food prohibited

There are already many sections regulating that children must have three meals and one snack a day that meet the food group and food quantity requirements that subsection (a) is not needed. What food or meal is implied that will be withheld? Please also note that some children for health reasons should not be allowed to eat certain foods and this section implies that the facility cannot exercise good judgement about what children should be eating and not let a child have a certain kind of food. Are we really giving kids a blanket right to eat whatever they want without any regard for what we know is good for them? Remember that parents withhold dessert from their own children when the child does not eat his vegetables or withhold dessert or a special snack as a means to get the child to behave. Programs also use food as inducements to change behaviors. An outing to the ice cream shop is for those children who have earned the privilege and the right to be trusted in the community. It should not be afforded to all children regardless of their behavior or personal health needs.

RECOMMENDED REWORDING: 3800.164 Forcing of food prohibited
A child may not be forced to eat food.

3800.312 Additional requirements

•(5) This subsection says "the facility shall have 50 square feet of space per child ..." This section is more stringent for day treatment facilities than Section 3800.98 regarding indoor activity space for other facilities where it is up to each individual program to work with what they have in terms of space and identifying separate areas. Day treatment facilities utilize large rooms to serve a variety of functions such as classroom space, indoor recreational space and group activity space. We cannot add onto buildings to accommodate this requirement and moving to larger spaces will

be costly. Please note that Department of Education requirements for schools are 15 square feet of space per child.

RECOMMENDED REWORDING: The facility shall have sufficient indoor activity space per child ...".

•(8) This subsection says "a meal shall be provided to the children at least every 5 hours they are at the facility". This implies the facility must prepare or supply the food. It does not take into account that in many day treatment facilities the children brown bag their lunch. Day treatment sites do not have kitchen facilities and it would be cost prohibitive to cater a meal every day. Facilities should insure that children have access to a meal but not be required to provide the meal. This wording change allows facilities to continue the practice of the brown bag lunch. Currently, facilities with children who do not brown bag deal with that issue as an individual problem and see that they have an appropriate meal.

RECOMMENDED REWORDING: Children shall have access to a meal at least every 5 hours they are at the facility.

I'd like to make two comments concerning fiscal impact and the need for department approved trainings. It is not realistic to imply that there will be minimal fiscal impact for facilities to comply with changes in regulations. The regulations go well beyond what some facilities have been doing and will naturally mean changes in procedures, internal structures, staff, and other things that do cost money to implement and maintain. Day treatment facilities, for example, have never had such a set of regulations. These costs will have to be passed on to the county agencies.

In regard to the references to "department approved trainings", it is more appropriate for a facility to design its own trainings that incorporate its particular philosophy and methods of dealing with children. While I know the department plans to issue RFPs for these trainings and hopes to have a wide variety, it is not appropriate for the department to stipulate how a particular agency should handle only a few training issues while allowing the agency to design all its other training needs. I am suggesting the department not issue RFPs to develop a core list of department approved trainings. Rather the department should require each facility to design its own training curriculum to meet its specific program needs and have that training plan on file for its annual inspection. Our day treatment facility has not had a restraint incident of any kind in its 20 year history. We pride ourselves on extensive training with our staff on how not to let situations escalate and on how to diffuse them. It's ridiculous for my staff to even go through some other agency's department approved training for behavior intervention procedures that includes training on restraint. We don't advocate that type of behavior intervention procedure and will not change the philosophy of our program to incorporate it. Please give serious consideration to individual agency training curriculums to meet the training requirements.

Thank you for your consideration.

Sincerely,

Judy B. Happ

Judy B. Happ
YSAP President