

IRRC Regulation #14-442 (#1927)
Department of Public Welfare
Child Residential and Day Treatment Facilities

Honorable Feather O. Houstoun, Secretary

Franky Goble

Date: 5/15/98



**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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May 15, 1998

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

Re: IRRC Regulation #14-442 (#1927)
Department of Public Welfare
Child Residential and Day Treatment Facilities

Dear Secretary Houstoun:

The Independent Regulatory Review Commission (Commission) has enclosed comments on your proposed regulation #14-442. These comments outline areas of concern raised by the Commission. The comments also offer suggestions for your consideration when you prepare the final version of this regulation. These comments should not, however, be viewed as a formal approval or disapproval of the proposed version of this regulation.

If you or your staff have any questions on these comments or desire to meet to discuss them in greater detail, please contact Fiona Wilmarth at 783-5438. She has been assigned to review this regulation.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:kcg
Enclosure
cc: Robert L. Gioffre
Lee Miller
Tom Vracarich
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

DEPARTMENT OF PUBLIC WELFARE REGULATION NO. 14-442

CHILD RESIDENTIAL AND DAY TREATMENT FACILITIES

MAY 15, 1998

We have reviewed this proposed regulation from the Department of Public Welfare (Department) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to clarity, reasonableness, and fiscal impact. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Delegation of Quality of Care Issues to Contracts between County Children and Youth Agencies and Providers. - Reasonableness and Protection of the Public Health, Safety, and Welfare.

In response to Question 18 on the Regulatory Analysis Form which accompanied the proposed regulation, the Department states that some regulatory content relating to quality of care issues has been deleted from the regulations, and consequently, "County Children and Youth Agencies *may* prefer to make their contract arrangements more specific." (Emphasis added.) We question the reasonableness of relying on contractual arrangements to sufficiently address quality of care issues.

It is unclear what control and enforcement authority the Department has over these contracts. If some agencies elect not to make their contracts more specific, the potential exists for inconsistent and, in some cases, poor quality of care for children. Furthermore, providers may serve children from several different counties and could be faced with complying with different quality of care standards for children served within the same facility. We request that the Department provide justification for the reasonableness of its approach to quality of care issues. We further request the Department explain how it will protect children from inconsistent and potentially poor quality of care and explain what control and enforcement authority it will have over quality of care areas governed solely by these contracts.

2. Placement of Children in an Appropriate Facility. - Clarity.

The proposed regulation is unclear regarding what precautions the Department will take to ensure that a child is placed in an appropriate facility to address his or her needs. Parents and advocacy groups are concerned that children will be placed in facilities simply based upon

available beds rather than the specific services a facility provides and how those services meet the needs of the child. We recommend that the Department include provisions in the final-form regulation that address appropriate placement of a child.

3. Section 3800.2. Applicability. - Reasonableness and Clarity.

Paragraphs (d) and (e) address annual inspections and certificates of compliance. These paragraphs are not related to the applicability of Chapter 3800. To improve the clarity of the regulation, we recommend that inspections and the resulting certificates of compliance be addressed in a separate subsection entitled *Inspections*.

Paragraph (f)(2) provides that Chapter 3800 applies to child detention centers. We question the inclusion of these centers in this chapter. It is our understanding that secure detention centers are generally single license facilities. Furthermore, the needs and problems of children in these facilities are often different and far more severe than those of children in other facilities. As the Youth Counselors of Mechanicsburg Home for Children and Family Services pointed out in their comments, most of the Children and Youth and Juvenile Probation clients are in placement due to the very same behaviors which are considered "unusual incidents" in Section 3800.16. We recommend that the Department address secure detention facilities in the existing Chapter 3760.

Paragraph (f)(4) provides that Chapter 3800 applies to child day treatment centers. We question the reasonableness of including day treatment facilities in the same chapter as residential facilities. In the Preamble, the Department states that day treatment facilities provide education and service programs for children who are transitioning from a residential program back to their families or who need special services to avoid residential placement. It would appear that the needs of children in day treatment facilities are significantly different than the needs of children in residential facilities. We recommend that day treatment facilities be addressed in a separate chapter that is specific to the needs of children served by these programs.

Paragraph (g)(1) provides that Chapter 3800 does not apply to facilities operated directly by the Department. In the Preamble, the Department states that it intends to apply the requirements of Chapter 3800 "to the extent possible" to state-operated facilities. We question under what circumstances the Department would be unable to apply the requirements of this chapter. The health and safety needs of children in treatment facilities would be the same regardless of whether a facility is operated by the Department or another entity. If different standards are applied to Department-operated facilities, the possibility exists that the quality of care will be different depending on the party who operates the facility. We request that the Department explain why its facilities should not be held to the same standards as those facilities covered by Chapter 3800. We further request that the Department clarify in the final-form regulation whether State-owned facilities which are operated under a contract with a private company are covered by Chapter 3800.

4. Section 3800.3. Definitions. - Clarity.

Child residential facility.

The definition of this term contains a typographical error. We recommend the reference to Section 3800.3(g) be changed to 3800.2(g).

ISP.

The proposed regulation defines the acronym “ISP” as an individual service plan. The regulation is unclear, however, because it fails to define “individual service plan.” We recommend this term be defined in the final-form regulation.

Definitions which should be added to Section 3800.3.

There are several terms which are used in the regulation but not defined. The clarity of the regulation would be improved if the following terms were defined in Section 3800.3: *child care supervisor, child care worker, day treatment center, pressure point techniques, and serious communicable disease.*

5. Section 3800.16. Unusual incidents. - Reasonableness, Fiscal Impact, and Clarity.

Section 3800.16(a) lists events that are considered unusual incidents. The facility is required to report these incidents on a form provided by the Department to the appropriate regional office of children, youth and families and the funding agency. Included in the list of unusual incidents are the following occurrences:

- An injury, trauma, or illness of a child requiring inpatient or outpatient treatment at a hospital;
- A child leaves the premises of the facility for 30 minutes or more without the approval of staff persons; and
- An incident requiring the services of the fire or police departments.

Service providers have commented that categorizing these incidents as “unusual” will generate a significant increase in the number of reports filed. The result will be an unreasonably burdensome and expensive reporting requirement which will take staff time and attention away from children.

Providers point out that facilities often rely on local hospitals to treat sprains, cuts, or minor illnesses. It would be unreasonable to require that these visits be reported as unusual incidents. We agree with the commentators and note that the existing Chapter 3680 regulations only mandate reporting of injuries that require inpatient hospitalization. However, we also recognize that reporting only injuries that require inpatient hospitalization could exclude some significant injuries or illnesses. We recommend that the regulation be revised to exempt reporting of hospital visits for minor injuries and illnesses. We further recommend that the Department include in the regulation examples of illnesses and injuries which will be considered minor.

We also question the basis for the 30-minute threshold for a child who leaves the premises without permission. Providers have commented that for the adolescent population, 30 minutes is too short a time to qualify an absence as unusual. They further note that the age and abilities of the child are significant in determining the level of concern surrounding an unauthorized absence. We request that the Department explain the basis for and reasonableness of the 30-minute threshold.

Commentators also note that the language relating to the services of the fire or police department is so broad that unusual incident reports would be required for incidents which do not endanger the health or safety of the children or staff. For example, the proposed language could require a report when a child pulls a false fire alarm. Requiring a report for this type of incident does not further the Department's goal of protecting the children's health, safety, and well-being through these regulations. We recommend that this requirement be revised to require an unusual incident report be filed when there is damage to the facility, when a child suffers a major injury, or when an assault on a child or staff person has occurred.

Section 3800.16(c) requires staff persons to "immediately" report the unusual incident. It is unclear if this requirement means the staff person must report the incident to a supervisor, or if this provision refers to the requirement in Paragraph (d) for the facility to submit a written report. This distinction is significant because it may impact the interpretation of the requirement to "immediately" report the incident. If Paragraph (c) refers to a report to the supervisor, the term "immediately" could reasonably be interpreted to mean as soon as possible after the incident occurs. If Paragraph (c) refers to the facility reporting requirement in Paragraph (d), a reasonable interpretation of "immediately" would be within 24 hours. We recommend that the Department clarify its intent in the final-form regulation.

6. Section 3800.32. Specific rights. - Reasonableness.

Paragraph (e) provides that a child has the right to communicate with others by visit, telephone, or mail. In its comments, the Juvenile Law Center (JLC) recommends that regulation be revised to incorporate the language in the current Section 3810.38(d), and for secure detention Section 3760.37, regarding mail. The Chapter 3810 and 3760 requirements specify that staff may not read children's mail, and that if mail must be searched for contraband, the staff may open the mail in the presence of the child (Chapter 3810) or the mail must be opened by the resident in the presence of the staff (Chapter 3760). We agree with JLC and recommend that the Department incorporate these provisions in the final-form regulation.

JLC also comments that the provisions in Chapter 3810 which relate to contact with counsel or clergy, a child's money and clothing should be included in Chapter 3800. It is unclear why the Department elected not to include these provisions in the proposed regulation. We recommend that the Department address these areas in the final-form regulation.

Paragraph (f) provides that the child shall have the opportunity to visit with family at least once every two weeks. We question how the Department determined two weeks as a reasonable minimum time period between visits. Establishing a minimum of two visits per month may

unnecessarily restrict family visits for children who could benefit from more frequent visits. We request that the Department explain the basis for the two-week minimum.

7. Section 3800.54. Child care supervisor. - Reasonableness and Protection of the Public Health, Safety, and Welfare.

Paragraph (a) permits a child care supervisor to be available either onsite or by telephone. We question the reasonableness of permitting the supervisor to be available by telephone, rather than onsite. This is of particular concern because the proposed regulation does not require a child care worker to have prior experience working with children or to have any college education (see Issue 8). We request the Department explain why it would not be in the children's best interest to have a supervisor available onsite.

8. Section 3800.55. Child care worker. - Reasonableness and Protection of the Public Health, Safety, and Welfare.

Section 3800.55(g) requires a child care worker to have a high school diploma or a general education certificate. Paragraph (h) requires a child care worker to be 21 years of age or older. There is no requirement for any college training or for any prior work experience with children as required by current regulations at 55 Pa. Code Sections 3760.56(b) and 3810.22(d). We question the reasonableness of omitting college or experience requirements. We request the Department explain how the requirements in the proposed regulation protect the health and safety of the children served by the facilities covered under Chapter 3800.

9. Compliance of existing staff with proposed education and experience requirements. - Economic Impact and Clarity.

We recognize that some existing facility employees may not meet the education and experience requirements in the proposed rulemaking, but may have demonstrated their competency through years of work experience. We recommend that the Department clarify in the final-form regulation if these employees will be grandfathered and if they will be required within a specific time period to obtain the education and experience requirements set forth in the regulation.

10. Section 3800.57. Staff training. - Reasonableness and Clarity.

Section 3800.57(b) requires full-time staff persons to have at least 30 hours of training in specified areas prior to working alone with children. Paragraph (c) requires part-time staff persons to have 10 hours of training in the same areas prior to working alone with children. We question the difference in required training hours. We recognize that part-time staff persons will spend less time with children than full-time staff persons. However, both part-time and full-time staff persons may be alone with children and will perform the same duties and encounter the same situations when they work with children. The same concern applies to the training hours required in Paragraphs (e) and (f) for staff who have completed the initial training. Consequently, we request the Department provide justification for why part-time and full-time staff should not be

required to have the same number of hours of training in the areas specified in Paragraphs (b)(1) - (6), (e), and (f).

In addition, the regulation is unclear concerning whether the Department will approve the training courses required by Paragraphs (b)(1) - (6), (e), and (f). We recommend that the Department clarify its intent in the final-form regulation.

Providers have commented that the requirement for annual training in some areas contradicts current training schedules. For example, CPR training provided by the Red Cross mandates recertification every two years, not annually. It is our understanding that the Department intends to accept current certification as meeting the training standards in the regulation. However, this intent is not reflected in the proposed regulation. We recommend that the Department clarify its intent in the final-form regulation.

11. Section 3800.102. Child bedrooms. - Clarity.

Section 3800.102(d) requires the ceiling height in each bedroom to be “at least an average of 7 1/2 feet.” It is unclear what this requirement means. We recommend the Department specify the minimum requirement for ceiling height in each bedroom in the final-form regulation.

12. Section 3800.105. Water areas. - Reasonableness.

Paragraph (a) requires ponds and lakes to be “fenced with a gate that is locked when the water area is not in use.” We question the reasonableness and feasibility of fencing ponds and lakes. Lakeside Youth Service (LYS) commented that its facility operates on a large campus that includes a swimming pool and a 3 1/2 acre lake. LYS notes that the swimming pool is securely fenced and locked at all times when not in use. However, the lake is used by clients and also the community and is open by permit for fishing and other recreational activities. Fencing the lake would not only be expensive, but would also prevent the community from using it. We believe LYS has raised valid concerns that may be shared by other providers that operate on large campuses. We recommend that the Department consider deleting the requirement to fence lakes and ponds.

13. Section 3800.129. Fireplaces. - Reasonableness.

This section prohibits the use of wood-burning fireplaces. Providers have commented that many older facilities have fireplaces which serve as the focal point in activity areas. They suggest that their use be permitted if there is a securely attached fire screen, and an adult staff person is present when the fireplace is in operation. We note that the current regulations at 55 Pa. Code § 3810.81(y) permit the use of fireplaces which are securely screened or equipped with protective guards. We recommend that the Department include the commentators’ suggested revision in the final-form regulation.

14. Section 3800.143. Child physical examination. - Clarity.

This section requires a child to have a physical examination within 15 days after admission and thereafter in accordance with the periodicity schedule recommended by the American

Academy of Pediatrics (AAP). Paragraph (e) lists the required components of the physical examination. Pennsylvania Protection and Advocacy, Inc. (PPA) and JLC assert that the list is incomplete because it does not include blood lead level assessments, sickle cell screening, dental examinations, and vision screenings.

It is our understanding that the Department intends for those elements to be included in the physical examination because they are recommended by AAP. The regulation is unclear, however, because it does not reflect the Department's intent. We recommend that the Department revise this section to explicitly list these components as requirements for the physical examination.

15. 3800.145. Tobacco prohibited. - Reasonableness.

The regulation prohibits possession or use of tobacco products by children and staff persons in the facility, on the premises of the facility, and during transportation provided by the facility. Numerous providers commented that tobacco is a legal substance for adults. They assert that it is unreasonable to prohibit staff from having tobacco products in their possession, either in their purses or vehicles, while on the premises of the facility. Although we support the Department's intent to keep tobacco products away from children, we recognize the dilemma faced by facility operators. We recommend the Department revise the regulation to prohibit use by both children and staff persons in the facility and on the premises, and to prohibit possession by children. We further recommend that the regulation clearly require tobacco products which the staff has in their possession to be locked and inaccessible to children at all times.

16. 3800.164. Withholding or forcing of food prohibited. - Reasonableness.

Paragraph (a) of this section prohibits the withholding of food or drink, including snacks and desserts, as punishment. We recognize that a child's nutrition should not be jeopardized as a form of punishment. However, we note that many parents withhold dessert from their children if they misbehave or if they fail to eat the more nutritious portions of a meal, such as vegetables. We request the Department explain why it would be unreasonable to withhold dessert or snacks under these circumstances.

17. Section 3800.184. Medication log. - Reasonableness and Clarity.

Subsection (c) requires that medication logs be updated "immediately after" each dosage is administered or self-administered. For clarity purposes, we suggest that the provision be amended to delete "immediately after." Subsection (c) should be amended to provide that the medication log be updated at the same time the dosage is administered or self-administered.

18. Section 3800.185. Medication errors. - Reasonableness and Clarity.

This section requires that "medication errors" and follow-up actions be documented. We question what is a "medication error," who determines the medication error, who determines what follow-up actions be taken, and where documentation should be made. We recommend that the Department add language to the final-form regulation defining a medication error, and delineating

procedures that must be followed after determining a medication error has occurred, how to correct the error, and where documentation shall be made (i.e. in the child's medical record).

19. Section 3800.186. Adverse reaction. - Reasonableness and Clarity.

The proposal requires that documentation of adverse reactions and a physician's response be kept. We question where this information should be kept, (i.e. in the medication log, the child's records, or both) and how long the record must be maintained. Finally, we also recommend that this section be amended to require a facility to notify a designated family member when an adverse reaction to a medication occurs.

20. Section 3800.188. Medications administration training; Section 3800.205. Staff Training; Section 3800.291. Criteria. - Reasonableness and Clarity.

Section 3800.188 refers to a Department approved medications administration course, Section 3800.205 requires staff training in a Department approved program in behavior intervention procedures, and Section 3800.291 requires a child to complete a Department approved training program to be eligible for transitional living. Commentators question what are Department approved courses, when and where are the courses offered, and to whom are the training programs available. According to providers, most facilities offer "in-house" training in these areas to their staffs. Providers question whether these in-house programs could qualify as Department approved programs.

According to the Department, it plans to publish, as a statement of policy, standards which must be met to qualify a course as a Department approved course. The Department will then publish a list of approved courses in the *Pennsylvania Bulletin*.

Although we understand the Department's intent to establish the criteria for approval as a statement of policy, we recommend that the Department publish a proposed regulation setting forth the standards that a program must meet to be approved. A proposed regulation would allow for public comment on the approval criteria and would ensure consistency among training programs.

Alternatively, if the Department chooses not to publish a proposed regulation, we suggest that the Department clarify its intent to publish a statement of policy in the Preamble to the final-form regulation. Included in the explanation, we suggest that the Department set forth criteria which it will use to approve programs. In addition, the Department needs to clarify whether existing programs developed by and currently used at a facility will qualify as a Department approved program. Finally, we suggest that the Department clarify whether a phase-in period for staff to meet the training requirements will be incorporated into the final-form regulation.

21. Section 3800.189. Self-administration of medications. - Reasonableness.

This section allows a child to self-administer medications, insulin injections, and epinephrine injections if the child is 13 years old or older, an authorized person observes and records the administration of the medication, and the child recognizes, distinguishes, and is able to administer the correct dosage. Commentators contend that this section is overly prescriptive.

According to providers, the age requirement is unnecessary. Many children under the age of 13 are able to administer their own medication in certain situations. For example, children with juvenile diabetes are taught from an early age how to administer their own insulin injections. Caretakers believe that the age requirement should be deleted. In addition, providers suggest that the decision of whether a child may self-administer medications should be made by a physician who determines whether the child is capable of self-administering.

We agree. We suggest that the Department review this section and amend the final-form regulation accordingly.

22. Section 3800.201. Behavior intervention procedure. - Clarity.

This section sets forth a variety of procedures used to modify behavior. As a general concern, providers have commented that the term “behavior intervention procedures” is only used in the proposal to refer to a class of aversive or restrictive procedures. Providers contend that the term might be misconstrued to prohibit the use of behavior modification procedures for positive influences in behavior. They suggest that the title of this section and this part of the regulation be changed to “Restrictive Procedures.”

We agree. We suggest that for the final-form regulation that the Department adopt the proposed change in the title.

23. Section 3800.202. Appropriate use of behavior intervention procedures. - Reasonableness and Clarity.

Subsection (a) provides that behavior intervention procedures may not be used in a punitive manner or for the convenience of staff persons. Advocacy groups also object to the use of behavior intervention procedures as a program substitution.

We recommend for clarity purposes that the Department revise Subsection (a) to provide that behavior intervention procedures may not be used in a punitive manner, for the convenience of staff persons, or as a program substitution.

Subsection (b) provides that behavior intervention procedures may be used only to prevent a child from injuring himself. Providers object to the provision because it fails to allow the use of intervention procedures to prevent harm to others or property. According to commentators, caretakers have a responsibility to protect all residents. Furthermore, damage to a facility infringes on the rights of the other residents to a safe and therapeutic environment.

We agree with the commentators. We recommend that the Department add language to the final-form regulation which allows the use of a behavior intervention procedure to prevent a child from injuring himself or others, from serious disruption of a program, and from damaging the facility.

Finally, Subsection (c) refers to the phrase “less intrusive techniques.” We question what the Department considers “less intrusive techniques.” We recommend that the Department define or provide examples of these techniques in the final-form regulation.

24. Section 3800.203. Behavior intervention procedure plan. - Clarity.

For clarity purposes, the words “behavior intervention” should be added before the word “procedures” in Paragraph (4) and the word “procedure” in Paragraph (5).

25. Section 3800.204. Unanticipated use. - Clarity.

This section provides that if behavior intervention procedures are used on an “unanticipated basis,” a behavior intervention procedure plan does not apply until after the procedure is “used four times for the same child in any three-month period.” We have received a significant number of comments regarding the clarity of this provision.

First, commentators question how the Department defines “unanticipated basis.” Second, providers question the meaning of “after a procedure is used four times.” Shippensburg University questions whether the phrase means after a single procedure has been used four times, or after there have been four occasions in which behavioral intervention has been used.

We agree that this section is ambiguous. We recommend that the Department define “unanticipated basis” and clarify “after a procedure is used four times” in the final-form regulation.

26. Section 3800.205. Staff training. - Reasonableness and Clarity.

For clarity purposes, the phrase “for as long as the person is employed” should be added after the word “kept” in Subsection (c).

27. Section 3800.208. Pressure points. - Reasonableness and Clarity.

Providers question why the use of a pressure point technique to escape from bites is prohibited by this section. According to providers, the pressure point technique is safe to use and the most effective method to escape from a bite. We suggest that the Department review whether an exception for bites should be included in this section in final-form regulation.

28. Section 3800.209. Chemical restraints. - Need, Reasonableness, and Clarity.

Subsection (c) requires that a physician examine a child immediately prior to the administration of a drug on an emergency basis. Providers question the need and reasonableness of this provision if the restraint is being administered on an emergency basis. We request that the Department explain its rationale and the need for the exam.

Subsection (d)(1) provides that a child’s vital signs shall be monitored at least once each hour. Providers question for how long after the chemical restraint is administered must vital signs be monitored. We suggest that the Department clarify this provision in the final-form regulation.

Finally, we question how long and where (i.e. child’s medical record) the documentation required under Subsection (g) must be maintained. We suggest that the Department clarify this provision in the final-form regulation.

29. Section 3800.211. Manual restraints. - Reasonableness.

Subsection (d) requires that the position of the manual restraint or the staff person applying a manual restraint be changed at least every ten minutes after applying the manual restraint. Subsection (e) requires that a staff person not applying the restraint to observe and document the physical and emotional condition of the child. Commentators object to the requirements of these two subsection for several reasons.

First, providers contend that the requirement to change positions every ten minutes during a restraint could create dangerous situations for the staff and clients. Because of the state of the child which causes a need for manual restraint, the requirement to change positions may cause injury to the staff, other children, or the child. In addition, the child may be subject to more stress than necessary.

Second, providers assert that requiring an additional, uninvolved staff person to “observe and document” may be impractical and unrealistic. The additional staff person observation requirement may reduce the supervision levels of the other children and increase staffing costs. Furthermore, the additional staff person may be required to participate in the manual restraint.

We recommend that the Department review the proposed language and revise the sections in the final-form regulation. We suggest that the Department consider amending these subsections to eliminate the requirement that positions be changed every ten minutes. Instead, the requirement to change positions should be based on the child’s safety and well being rather than specific intervals. Positions should be assessed every ten to fifteen minutes to insure the safety of the child and the staff, and changed, if needed. Finally, we recommend that the Department review the requirement that an uninvolved staff person “observe and document,” in light of staff constraints, and consider deleting the requirement.

30. Section 3800.212. Exclusion. - Reasonableness and Clarity.

Subsection (b) prohibits the use of exclusion for more than 60 minutes, consecutive or otherwise, within a two-hour period. Subsection (c) prohibits exclusion for more than four times within a 24-hour period.

Commentators agree that exclusion for long, consecutive time periods may be harmful to a child. However, commentators assert that these two subsections may be inconsistent. Essentially, a child may be excluded for an hour at a time, yet may not be excluded for five, three-minute intervals in one day.

We request the Department review these subsections. We recommend that the Department consider deleting Subsection (c) from the final-form regulation.

31. Section 3800.221. Development of ISP. - Clarity.

Subsection (b) requires that the ISP be developed by the child, parent, guardian or custodian, child care staff persons, funding agency representative, and other appropriate

professionals. Subsection (c) provides that “reasonable effort shall be made to involve the child, parent, guardian or custodian in the development of the plan ISP.”

These two subsections appear to be inconsistent. Subsection (b) requires the involvement of listed individuals in the development of the ISP yet Subsection (c) only requires that reasonable efforts be made to involve the individuals in development. We recommend that the Department delete Subsection (c) from the final-form regulation or provide justification why the two provisions are not inconsistent.

Finally, Children & Youth Services (CYS) of Lycoming County commented that emergency shelter care programs or facilities that only provide emergency care for a maximum of 30 days should be required to complete an emergency placement plan as required by Section 3810.36. According to Lycoming County CYS, an ISP that would have to be completed within 30 days would not be useful to these facilities.

We agree with Lycoming County CYS. We question what type of plans emergency shelter care programs or facilities would be required to complete under the proposed regulation. We ask the Department to add a provision similar to the existing requirement at Section 3810.36 to the final-form regulation. Alternatively, we ask the Department to provide an explanation as to how the proposed regulation addresses children in facilities for 30 days or less and why an emergency plan is not needed.

32. Section 3800.222. Review, revision, and rewrite of the ISP. - Consistency with Mental Health Procedures Act, Reasonableness and Clarity.

Subsection (a) requires that each child’s progress on the ISP be reviewed and revised, if necessary, at least every six months. We have a number of concerns with this section.

First, Subsection (a) fails to address children with mental health treatment plans who require care under the Mental Health Procedures Act (50 P.S. §§ 7106 - 7108). Section 7108 of the Mental Health Procedures Act specifically requires that treatment plans be reviewed “not less than once in every 30 days.” Second, we question how the Department determined that reviews be completed at least every six months. Six months may be a long period of time to wait to add a goal for a child to attain. Finally, we question whether the child, parent, guardian or custodian, or other personnel would be included in the review and revision of the ISP.

We recommend that the Department add language in the final-form regulation that provides that if a child requires a treatment plan under the Mental Health Procedures Act, a review of the child’s progress shall be completed at least every 30 days. In addition, we request that the Department explain the basis for the six-month review and whether it considered shorter review periods such as three months. Finally, we suggest that the Department add a cross-reference to Section 3800.221(b) in Section 3800.222(b) to clarify who is involved in the review and revision of an ISP.

33. Section 3800.223. Content of the ISP. - Clarity.

This section delineates the contents of an ISP, such as the goals and time-limited objectives for the child. However, the language of this section is very general and provides little guidance regarding what information must be contained in an ISP or what a child needs to accomplish.

We recommend that the Department revise the language of this section to provide more guidance as to the ISP contents. We agree with PPA that Paragraph (1) should be revised to state that an ISP should include “measurable and individualized goals and time-limited objectives for the child.” In addition, we agree with PPA that the ISP include language regarding how progress will be measured, including by whom and what objective criterion will be used to measure progress.

34. Section 3800.225. Copies of the ISP. - Clarity.

Copies of ISPs and revisions to the plan are to be provided to the parent, guardian or custodian, the funding agency, and persons participating in the development and revisions of the ISP. In addition, copies of the ISP and revisions are to be kept in the child’s record.

We question whether reports of a child’s progress on meeting the goals and objectives will also be made available to those listed in Subsection (a) and be included in the child’s record. We suggest that the Department amend the regulation accordingly.

35. Section 3800.226. Education. - Reasonableness and Clarity.

This section provides that “each child who is of compulsory school age shall participate in a Department of Education approved school program or an educational program under contract with the local public school district.” We received comments from JLC and PPA raising concerns with the lack of specificity and clear guidance regarding educational requirements. Specifically, JLC and PPA object to the lack of guidance on a child’s right to a free and appropriate public education, the lack of responsibility for educational planning, and lack of recognition of the role of parents in educational planning. Finally, they object to the lack of a reference to a child’s right to attend a school off the grounds of the facility.

We agree with JLC and PPA that Section 3800.226 does not provide adequate safeguards to insure that a child’s right to education will continue after entering a residential facility. We recommend that the Department add language to this section to address the concerns of JLC and PPA. Alternatively, we recommend that the Department provide an explanation as to how the language of Section 3800.226 insures that a child’s right to free and appropriate public education, including the right to attend school off the grounds of the facility, is protected.

36. Sections 3800.241 - 3800.245. Child records. - Reasonableness and Clarity.

These sections address the requirements for child records. In their comments, PPA and JLC expressed concern that the interests of children and families are not sufficiently protected

because the regulation is silent with regard to confidentiality of records. JLC offers suggested revisions to address this issue.

We agree with PPA and JLC that the regulation fails to give clear guidance to providers and fails to protect the confidentiality of children and families. The existing regulations at 55 Pa. Code Sections 3680.35 and 3760.92 contain provisions which address confidentiality of records. It is unclear why the Department has elected to remain silent on this issue in Chapter 3800. We recommend that the Department review JLC's suggested language and add a section to the final-form regulation to address confidentiality of records.

37. Section 3800.273. Additional requirements. - Reasonableness.

Paragraph (13) of this section sets forth the requirements for the use of mechanical restraints or handcuffs and Paragraph (14) governs the use of seclusion. The provisions apply to secure care and secure detention facilities.

PPA and JLC raised objections to the use of handcuffs and seclusion in secure care and secure detention facilities. According to PPA and JLC, the regulation inappropriately expands the use of handcuffs and seclusion. They assert that these restraints should only be used for very short-term control of behavior and should never be used as a form of treatment or discipline and never for prolonged periods of time. PPA and JLC believe that the current Section 3760.42 relating to the use of isolation and handcuffs should be retained.

We agree with PPA and JLC that the current requirements governing the use of handcuffs and seclusion should be incorporated into the Chapter 3800 regulations. The current provisions at Section 3760.42 provide more guidance to facilities regarding the use of handcuffs and seclusion and provide more protection for children. In addition, we question the need for the new requirements.

We also have specific concerns with the new provisions. In addition to failing to restate the protections contained in Section 3760.42, the regulation would allow six-hour periods of handcuffing that could be repeated indefinitely. The new subsections require the removal of handcuffs or leg restraints for at least ten minutes during every two hours the restraint is used. We question the reasonableness of removing the restraints at these intervals and the safety concerns that could arise from the removal. Although the new provisions reduce the time periods children may be placed in seclusion, the regulation fails to address the protections contained in Section 3760.42(f)(1)(iii), (iv), and (v).

We recommend that the Department delete the new requirements, except for the reduction in the seclusion time periods. We recommend that the Department incorporate the existing requirements governing the use of handcuffs and isolation into the final-form regulation.

38. Section 3800.293. Additional requirements. - Clarity.

Subsection (a) requires one child care worker for every 12 children during awake hours. However, Subsection (c) provides that if there are eight or fewer children present on the premises of a transitional living facility, one child care worker may be available by phone.

These two subsection are confusing. From the language of the regulation, if eight children or less are on the premises, a child care worker need not be on the site. We recommend that the Department clarify these two subsections in the final-form regulation.

39. Section 3800.302. Exceptions for outdoor and mobile programs. - Reasonableness.

Subsection (b) lists regulatory exceptions for mobile and outdoor programs that operate from stationary settings such as teepees and cabins. Paragraph (3) makes exceptions to the sanitation requirements, Paragraph (4) makes exceptions to the sanitation, ventilation, and lighting requirements, and Paragraph (5) makes exceptions to the water and temperature requirements. The Bureau of Food Safety and Laboratory Services in the Department of Agriculture (Bureau) submitted comments objecting to the exceptions.

The Bureau raises meritorious concerns with the exceptions. We recommend that the Department consider deleting the exceptions in the final-form regulation or provide an explanation as to why the exceptions should not be deleted.

40. Section 3800.307. Additional requirements for outdoor and mobile programs. - Reasonableness and Clarity.

The Bureau raised concern with Subsection (a)(3) which provides that children shall have an opportunity to bathe at least once a week and “wash their hands and brush their teeth once a day.” According to the Bureau, because hands are the number one cause of transmitting disease from person to person or from person to food to person, hands must be washed more often than once a day.

We agree. We recommend that the Department review these requirements, including the requirement that teeth be brushed at least once a day, and consider revising the minimum requirements in the final-form regulation. We also recommend that the Department clarify the number or availability of toilet facilities at these facilities.

Finally, Subsection (b)(4) states that staff persons responsible for teaching children high risk activities such as horseback riding, biking, and boating “shall be trained by an appropriate, recognized source in safe practices regarding these activities.” We question who are “appropriate recognized sources,” who approves the sources, what standards must be met to be approved, and what are “safe practices regarding these activities.” We also question how current the training must be for staff persons to be able to teach children the listed activities and how often training must occur. Finally, we question how long must the documentation be kept. We recommend that the Department clarify this provision in the final-form regulation.

41. Section 3800.311. Exceptions for day treatment. - Clarity.

Paragraph (8) makes exceptions for day treatment facilities from the requirements of Section 3800.103(a) relating to bathrooms. We recommend that the Department review the cross references to the exempted subsections. It appears that the Department may be inappropriately exempting day treatment facilities from the wrong requirements. We suggest that the Department clarify the exemptions in the final-form regulation.

42. Section 3800.312. Additional requirements. - Clarity.

Paragraph (8) states that a meal shall be provided to the children at least every five hours they are at the facility. We received comments from providers raising concern whether providers or facilities will now be required to provide lunches. According to providers, some programs offer meal service while others require participants to bring their own lunch. Similar concerns were expressed with the language of Paragraph (9) regarding snacks.

We recommend that the Department review these two provisions and consider amending them in the final-form regulation. Paragraph (8) could be amended as follows: A meal break shall be provided to the children at least every five hours they are at the facility.

43. Section 5310.3. Applicability. - Clarity.

Subsection (b) sets forth which facilities are governed by the requirements of Chapter 5310 and the new Chapter 3800. However, the language of Subsection (b) is ambiguous and confusing concerning host homes. We recommend that the Department clarify this subsection in the final-form regulation.