KEVIN BLAUM, DEMOCRATIC CHAIRMAN
AGING AND YOUTH COMMITTEE

152 SOUTH PENNSYLVANIA AVENUE
WILKES-BARRE, PENNSYLVANIA 18702
PHONE: (717) 825-5934

MAIN CAPITOL BUILDING
HOUSE BOX 202020
HARRISBURG, PENNSYLVANIA 17120-2020
PHONE: (717) 783-2580

House of Representatives

COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

April 8, 1998

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

Dear Secretary Houstoun:

Enclosed please find my comments submitted on behalf of the Democratic Members of the House Aging and Youth Committee regarding the proposed Child Protective Services regulations that were published in the Pennsylvania Bulletin on February 21, 1998.

As the prime-sponsor of the legislation that became Act 151 of 1994, I am particularly interested in making sure that the regulations reflect the intent of the General Assembly in respect to the statutory reforms that were designed to better protect children.

I look forward to working with the department, Independent Regulatory Review Commission, and other interested parties to resolve some of the questions and issues that are addressed in these comments.

Thank you for giving these important issues your serious review and attention.

Sincerely,

KEVIN BLAUM, Democratic Chairman
Aging and Youth Committee

Enclosure

Comments on DPW Proposed Regulation #14-441
Submitted by Representative Kevin Blaum
Democratic Chairman, House Aging and Youth Committee

Subchapter C. General Protective Services. Sections 3490.221 through 3490.242.

The Department of Public Welfare has thoroughly obfuscated and distorted legislative intent in regard to general protective services. It has limited "general protective services" to cases involving "neglect," which violates legislative intent and statutory definition for general protective services. The department defines "neglect" as nearly identical to the statutory definition of "serious physical neglect." Under the CPSL *serious physical neglect* is considered *child abuse*. Thus, the department, for whatever reason, has created a serious problem.

The net result could be disastrous. Caseworkers, unable to differentiate between the two definitions, (serious physical neglect constituting child abuse and neglect constituting a need for general protective services) may find themselves with a choice that the statute never intended: the caseworker could either substantiate the case as an indicated child abuse case *or* consider it a general protective services case, where the case would not become part of the state child abuse registry, there would be less paperwork and reporting to the state, and records would only be maintained at the county level *if* the family was accepted for services. In any case, the regulation appears to narrow the population of children and families for whom protective services would be available.

I believe the legislative history on the general protective services section of the law is relevant in this discussion. The general protective services section that was part of HB 1001, which I authored and which became Act 151 of 1994, is now found at 23 Pa.C.S.A. Sections 6373 through 6378. It was added to the Child Protective Services Law (CPSL) specifically to ensure protective services were available to those children and families where the level of harm, lack of supervision, or injury to a child did *not* constitute *child abuse* as defined in Section 6303 of the CPSL but where risk factors indicated a need for assistance to prevent more serious abuse. The legislative intent was to provide services to families at an early stage before child abuse actually occurs. The General Protective Services sections of the law were intended to signal to the department and county children and youth agencies the Legislature's commitment to *prevention* of child abuse and early identification of risk factors leading to child abuse. In fact, through the needs-based budgeting process the county agencies include "general protective services" as a category for which they claim reimbursement.

In the proposed regulations at Section 3490.223 (Definitions), DPW has suggested defining "general protective services" to mean:

"Those activities and services arranged or provided, or both, by each county agency for *neglected* children and their families both during the assessment and while

the case is open for services." (Emphasis added.) The *statute* at 23 Pa. C.S.A. 6303, however, in defining "general protective services" does *not* refer to neglect and instead remains broad. The *statutory definition for general protective services* reads:

"Those services and activities provided by each county agency for *nonabuse cases requiring protective services,* as defined by the Department of Public Welfare in regulations." (Emphasis added.)

Section 3490.223 defines neglect as "An act or failure to act by a parent or the primary person responsible for the care of a child which results in a failure to provide the *essentials of life* and which creates a potential for harm to the child's safety, functioning or development." (Emphasis added.) The CPSL provides for a description and definition of serious physical neglect under the child abuse definition as "constituting prolonged or repeated lack of supervision or the failure to provide *essentials of life*, including adequate medical care, which endangers a child's life or development or impairs the child's functioning." (Emphasis added.)

I suggest the department strike references throughout the proposed regulations wherever general protective services are linked to findings of "neglect" or "suspected neglect." For the department's consideration I am proposing an alternative definition for "general protective services" that perhaps will achieve the breadth that the General Assembly intended:

"General protective services---Those activities and services arranged or provided, or both, by each county agency for cases where a county agency determines a child's health, safety, functioning, or development is harmed or threatened as a result of an act or failure to act by a parent or the primary person responsible for the care of a child but where the harm, act or failure to act does not constitute child abuse as defined in 6302 (b)."

Verification of the existence of child abuse and student abuse records for school employees. Section 3490.131. Definitions.

I believe the department is taking liberty with the requirements set by the CPSL that school employees must obtain clearance checks from DPW when they transfer from one position to another and have not obtained a clearance from DPW within the year preceding the transfer.

The department is proposing to narrow the meaning of "position" by defining it as the "job classification" of a school employee, rather than defining position in the broadest sense that was intended when the statute was passed.

The General Assembly in 23 Pa.C.S.A. Sections 6354 through 6358, added a

section to the CPSL dealing with background checks for employment in schools to require school employees to obtain clearance checks from DPW to determine if they were perpetrators in an indicated or founded child abuse report or report involving student abuse by a school employee. The statute defines applicant at 23 Pa.C.S.A. Section 6354 as "an individual who applies for a position as a school employee. The term includes an individual who transfers from one position as a school employee to another position as a school employee."

The statute provides no justification for the narrow interpretation of "position" that DPW is attempting to impose through regulations. The General Assembly was specifically attempting to address situations where teachers or school employees were shuffled from one school or assignment to another following a negotiated arrangement arranged between a school and school employee who abused a student. These employees were transferred and no protection was afforded the students or other school employees in the new assignment. I argue that the current law does cover situations where a school employee transfers from one building to another, since no exceptions were provided by the General Assembly.

It should also be pointed out that the department's position relating to clearance checks for substitute teachers and employees in Section 3490.132(g) seems inconsistent with its proposed interpretation of "position" for school employees. Subsection (g) requires substitutes to provide a recent clearance to each school if the applicant wants to be on the school's substitute list. In fact, the proposed regulation states "The fact that a substitute appears on one school's list is not sufficient evidence to allow another school to add his name to its substitute list." This provision suggests the department believes in the concept that a different location should trigger a recent clearance check.

The individuals whom the current law is attempting to protect are unsuspecting, young victims of pedophiles and seriously violent, dangerous adults. The law aims to prevent adult perpetrators from having an opportunity to abuse other youngsters. The proposed regulation should be revised so that the "transfer of position" includes changes in location where the employee will be stationed as well as changes in job classifications. A letter which I wrote to DPW on this issue in May of 1996 is enclosed for your review.

Section 2490.2 Purposes.

I recommend that the department revise this section. The statute at 23 Pa.C.S.A. Section 6302(b) stipulates the purposes of the act. I urge the department to incorporate the following purposes of protective services which are taken directly from the statute:

---to establish in each county protective services for the purpose of investigating the reports swiftly and competently.

---to provide rehabilitative services for children and parents involved so as to ensure the child's well-being.

---to ensure that each county agency establish a program of protective services with procedures to assess risk of harm to a child and with the capabilities to respond adequately to meet the needs of the family and child who may be at risk.

Section 3490.31. Departmental responsibilities. Receipt of reports.

The proposed regulations provide that ChildLine will only accept for investigation reports of suspected child abuse when the child is under 18 years of age at the time of the report.

I question whether this violates the statutory provisions in the definition of child abuse. Pursuant to Pa.C.S.A. Section 6303 (b), Definitions, child abuse is subdivided into four categories, and subsections (b)(1)(ii) and (iv) place no time restriction on when the report is made following the incident as long as the child was 18 years of age *at the time of the alleged abuse.* Section (b)(1)(ii) refers to "An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age." Section (b)(1)(iv) refers to "Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision of the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning."

Does DPW have the statutory authority to screen and refuse to accept reports of suspected abuse in those cases where the statute has not stipulated that the incident is a "recent act," defined to mean committed within two years of the report to DPW or the county agency? I recommend DPW strike the new language it proposed in this section.

Section 3490.32. ChildLine reporting to [CPS] the county agency.

In this section DPW attempts to develop procedures required by 23 Pa.C.S.A. 6334(a) which directs DPW to transmit reports of suspected child abuse immediately to the appropriate county agency, which the statute defines to be where the suspected child abuse occurred. The 1994 amendments also asked DPW to address those situations where the residency of the subjects in a report may differ from where the abuse occurred, which would mean that the cooperation of several counties may be necessary.

DPW's proposed regulation directs ChildLine to notify the county or counties

where the abuse occurred as well as the county where the child resides. The regulation directs the county that first received the report to contact the other county or counties and have them decide amongst themselves which county will be responsible for the report. If there is disagreement, according to subsection (d), the county that first received the report must contact the regional office which will make the decision.

All of this "coordination" among the counties is supposed to occur while the clock is ticking for seeing the child within 24 hours of the report and completing the investigation in 30 days. I suggest the department add some time lines for decisions in these cases so that children's lives are not jeopardized while the counties figure out which agency is in charge of the case.

Unless these procedures are improved, it is likely that there will be more unsubstantiated cases of child abuse simply because of bureaucratic entanglements.

Section 3490.33. Files.

Can DPW clarify if its statistics include information on unfounded cases? Does the department review cases that are unfounded, pending expunction, during its licensing inspections, to determine the reasons why the cases are unsubstantiated? These questions relate to the enormous range in substantiation rates from one county to another, even when counties of similar populations are compared to one another.

Section 3490.35. Statewide Central Register.

The proposed regulations give DPW latitude that is not expressed in the CPSL to determine that a founded or indicated report should *not* be entered into the Central Register if the department determines there is insufficient documentation to justify entering the report.

I don't believe the department has the authority to further screen the report, but I am interested in the department's explanation. The county agencies already are required to document the basis for their conclusions in an indicated (substantiated) report. Is this proposed language suggesting DPW could intercept the county's determination of an indicated report or a court finding of child abuse? Would this decision result in DPW making the report unsubstantiated? What documentation is DPW looking for, and what is DPW requiring the courts to provide the department?

Section 3490.53 (d). Function of county agency.

Subsection (d) of this section warns the county agencies that a child cannot be deemed abused because of environmental factors beyond the control of the parent or persons responsible for the child's welfare. This language is already included in the definition section of the law and regulations and is inappropriately inserted here. Since the rest of the definition of child abuse is *not* restated here to clarify to the county agencies what child abuse *is,* not only what it *is not*, this subsection does not seem warranted. I suggest that it be deleted.

Section 3455. Investigation of reports of suspected child abuse.

A new subsection should be added in this section to incorporate one of the important new mandates of the 1994 amendments to the CPSL.

Section 6368 of 23 Pa.C.S.A. requires the county agency during the child abuse investigation to provide or arrange for services necessary to protect the child while the agency is making a determination pursuant to this section. The regulations should reflect this extremely important protection for children.

Section 3490.59(b). Action by county agency after determining status of the report.

This subsection proposes that if a report is unfounded and a family is not accepted for services, but the family needs services, the county agency will advise the family of social services that are available.

What games are we playing with these families, whom DPW claims actually need services but the county refuses to accept them for services? Where in these regulations is DPW providing details as to the criteria for county agencies refusing to accept a family for protective services when the same agency determines the family needs the services?

Section 3490.61. Supervisory review and child contacts.

I endorse DPW's proposed change in subsection (c)(1) which requires the county agency to have face-to-face weekly contacts with parents and children designated as high risk cases and in subsection (c)(2) which requires the county agency to have face-to-face monthly contacts for a 6-month period with parents and children in those cases where the child was removed from the abusive setting or where

the case was not high risk.

In subsection(a), however, I am concerned that the county agency supervisor is not required to review each report of suspected child abuse within 10 days of receipt of the report. It appears the department is relegating the supervisor's review to some vague standard set by each county. If the state is to promote the concept of early detection and identification of risk factors, and if staff turnover rates continue to be regrettably high for caseworkers, it would behoove the department to place timelines on the supervisor's review and to make that review early in the investigative process.

Section 3490.62(b). Repeated child abuse.

The regulation provides that if a child is a victim of *three or more substantiated incidents of child abuse,* the supervisor will arrange for a review by the multidisciplinary team.

I urge the department to change this regulation so that a multidisciplinary team is convened immediately following a *second report of suspected or substantiated child abuse.* The purpose section of the CPSL indicates that one purpose of the law is to prevent further abuse of abused children. If a child is a victim of three instances of substantiated abuse, it is a wonder that the child is still alive. Do we only form multidisciplinary teams that are child fatality review teams?

The regulations at 3490.60 state that in multidisciplinary teams the professionals pool their knowledge and skills in diagnosing child abuse, recommend comprehensive, coordinated treatment, and periodically assess the relevance of the treatment and progress of the family.

I urge the department to require the timely formation of multidisciplinary teams as an excellent child abuse prevention and treatment component of the child service system.

Section 3490.70. Expunction, sealing and amendment of report by the county agency.

Pursuant to 23 Pa.C.S.A. Section 6341, which reflects the 1994 amendments made by Act 151, the sealing of child abuse records was eliminated from the statute. The secretary of DPW up to July 1, 1995, had the authority to seal child abuse records based on a request from a subject of an indicated report. The General Assembly decided to eliminate the sealing of records and instead permit perpetrators to appeal their cases and request the expunction or amendment of records through the hearings

and appeals process.

The department, in my view, should not be re-inserting references to sealing of records when the statute clearly eliminated that process. I do not think the department has to devise a system whereby certain individuals whose cases were on file prior to July 1, 1995 operate under different rules since the statutue contained no specific direction to do so. My inclination is to avoid confusion by deleting any reference to the sealing of records throughout the entire set of regulations.

Section 3490.9/1. Guardian ad litem or court designated advocate.

This proposed regulation addresses the 1994 amendment in Section 6340(a)(3) of the CPSL to permit the release of information in confidential child abuse reports to a court designated advocate as well as the guardian ad litem. Based on comments from several professionals who are involved with court cases, it seems that the word "or" should be deleted from the proposed regulation because it suggests that the county agency could only give the information to the guardian ad litem, who must be an attorney in an abuse case, *or* the court designated advocate. Inserting an "and" would solve the problem and satisfy legislative intent.

Also, I suggest that the department consider defining a "court designated advocate." Probably most courts use the model referred to as CASA, the Court Appointed Special Advocate. I urge the department to include language in this section that would specify that the court designated advocate is "a volunteer trained in respect to laws, regulations, and services for abused and neglected children," or "a volunteer trained in accordance with standards of practice adopted by the Court Appointed Special Advocate program, otherwise known as CASA."

Section 3490.331(a)(10). Annual report on required activities.

The annual report is to include any recommendations for legislative changes. I would also suggest that the department indicate any administrative remedies or changes that the department proposes to improve the system and which do not require a new statute to implement.

Section 3490.341. Staff-to-family ratios.

The ratios for protective services are not specified within this particular regulation but are referenced by referral to 3030.32 and 3140.17. These regulations require that the caseworker-to-family ratio be one caseworker for 30 families. I urge the

department to recognize that many of these families have more than one child, and therefore the ratios should be staff-to-family ratios related to number of children in the home. Feedback from the department and projections as to the cost of factoring the number of children into the staff-to-family ratios would be most appreciated.

Section 3490. 371. Availability of an attorney for the county agency.

Has the department considered developing training requirements for attorneys representing the county agencies on issues relating to abused and neglected children and child welfare law? Could the department clarify what steps it has taken in this regard?

Section 3490. 401. Intercounty transfer of cases.

I applaud the department for incorporating these procedures into these proposed regulations. Would the department consider adding a clarification to subsection (c) that the receiving agency must advise the referring agency within 30 days as to the services provided to the family and the status of the case? This would ensure continuity in the exchange of information.

Also, in subsection (f), which covers instances when the agency referring the case does not know the exact address where the family can be located, I would recommend adding a sentence to require the receiving county to demonstrate an affirmative action to locate the parents, such as by contacting the county assistance office or public schools. If the families are not located, many children will be denied the protective services that they need to shield them from abuse and neglect.