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Senate of Pennsylvania

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April 13, 1998

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John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
 14th Floor, Harristown 2
 333 Market Street
 Harrisburg, PA 17101

Dear Mr. McGinley, Jr.:

Enclosed please find my comments on DPW, Proposed Regulation #14-441, Protective Services, for your edification.

Thank you for your kind attention to this information.

Best wishes,

Sincerely,

HARDY WILLIAMS
 State Senator - 8th district

HW:ls

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**COMMENTS ON DEPARTMENT OF PUBLIC WELFARE
 OFFICE OF CHILDREN, YOUTH AND FAMILIES
 PROPOSED REGULATION #14-441
 PROTECTIVE SERVICES
 SUBMITTED BY SENATOR HARDY WILLIAMS
 DEMOCRATIC CHAIR, SENATE HEALTH & WELFARE
 COMMITTEE**

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1. §3490.5(b)(4) - Waivers.

The wording of this subsection suggests that there are some circumstances under which the secretary may authorize the violation of a Federal statute or regulation or a State statute. To clarify this, I recommend that the word "or" be added after the first time that the word "regulations" appears and that a period be placed after the phrase "State statutes" and that the rest of that subsection be deleted.

2. §3490.14 - Privileged communication.

This section fails to include the statutorily granted exception for clergy, found at 23 PaCS §6311(a). The only section of the regulations that includes the exception is §3490.4 - Definitions. Unfortunately, it is the definition of the phrase "Required reporters" that includes the exception while §3490.14(a) does not use that phrase at all. Instead, it uses the phrase "professional person required to report". I recommend that the exception for clergy be specifically written into this section.

3. §3490.91 - Persons to whom child abuse information shall be made available.

In subsection (5.1) of this section, DPW adds a requirement that the court of common pleas must request a copy of child abuse information in writing in any matter involving child custody. The statute, at 23 PaCS §6340(5.1) contains no requirement that the request must be in writing. In contrast, the department does not require a written request from the subject of the report, §3490.91(12) while the statute does place such a requirement on the subject, 23 PaCS §6340(b).

4. §3490.105 - Request by the subject of a founded or indicated report for expunction, amendment or sealing of an abuse report received by ChildLine prior to July 1, 1995.

Act 1994-151, the act which these regulations are intended to implement, removed the authority of the secretary to seal records under the Child Protective Services Law. That act amended 23 PaCS

§6341(a)(1) by deleting the authority to seal. The act was signed by the governor on December 16, 1994 and the amendment §6341(a)(1) was effective July 1, 1995. It was quite clearly the intent of the legislature that subjects of reports would have six months to request from the secretary that reports be sealed and after that time the secretary would no longer have authority to seal. Any other reading is inconsistent with the statute. In an effort to clarify, I recommend that the phrase "received by ChildLine prior to July 1, 1995" be placed right after the word "Request"

5. §3490.106a(g) - Hearings and appeals proceedings for indicated reports received by ChildLine after July, 1, 1995.

This subsection, which places the burden of proof in hearings on the perpetrator if he appeals the secretary's decision to deny the request to amend or expunge an indicated report of child abuse, violates the clear wording of the statute. The CPSL reads, at 23 PaCS §6341(c):

Review of refusal of request.-- If the secretary refuses the request..., the perpetrator or school employee shall have the right to a hearing... The burden of proof in the hearing shall be on the appropriate county agency.

There is no authority for splitting the burden of proof depending upon the identity of the appellant.

6. §3490.321(d) - Establishment of standards for a risk assessment process.

DPW will publish the initial standards for risk assessment established under this section. Subsequent changes, however, will only be communicated to county agencies and will be so communicated by bulletin. The public, and the legislature have a right to know about any changes and have a right to participate in a regulatory review process involving them. Those changes would qualify as regulations and should be subject to the same regulatory review process.

7. §§3490.221 through 3490.242 - General Protective Services

I support the comments of Rep. Kevin Blaum, the author of Act 1994-151 and adopt his comments on these sections as if fully set out herein.

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REVIEW COMMISSION



Senate of Pennsylvania

Date: 4/13/98
 To: CHRISTMAN, JOHN R. MCGINLEY, JR.
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Message: Comments on JAW
Proposed Regulation
#44-44
Protective Services

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