



**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
333 MARKET STREET
14TH FLOOR
HARRISBURG, PA 17101**

**(717) 783-5417
Fax (717) 783-2664**

April 23, 1998

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

Re: IRRC Regulation #14-441 (#1928)
Department of Public Welfare
Protective Services

Dear Secretary Houstoun:

The Independent Regulatory Review Commission (Commission) has enclosed comments on your proposed regulation #14-441. 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 Mary Lou Harris at 772-1284 or James M. Smith at 783-5439. They have 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: Joseph L. Spear
Lee W. 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. 14-441

PROTECTIVE SERVICES

APRIL 23, 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 economic impact; protection of the public health, safety, and welfare; reasonableness; need; and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 3490.4. Definitions. - Clarity.

We have identified the following definitions that vary from the statutory definitions: “deviate sexual intercourse,” “forcible compulsion,” “founded report,” “indicated report,” “individual residing in the same home as the child,” “person responsible for child’s welfare,” “protective services,” “required reporters,” “serious mental injury,” “serious physical injury,” “sexual abuse,” “subjects of the report,” and “unfounded report.” Since these specific terms are defined in Act 151 of 1994 (Act) and in Act 10 (SS1 of 1995), we recommend that the Department use the statutory definitions in Section 3490.4.

Sexual exploitation

The term “sexual exploitation” is used in Section 3490.55(g) but is not defined. Similar to the above comment, we recommend the Department add the statutory term “sexual abuse or exploitation” in the definitions section of the regulation, and use the term consistently in the body of the regulation. Furthermore, if the Department wants to define terms used in the definition of “sexual abuse or exploitation,” those definitions should be added as separate terms and definitions.

Certified medical practitioner

Two commentators suggested that the definition of “certified medical practitioner,” found in Section 3490.52(h) of the proposal, should be modified to include clinical nurse specialists and registered nurses. We recommend that the Department clarify whether clinical nurse specialists and registered nurses qualify as “certified medical practitioners” for purposes of the regulation.

2. Section 3490.5. Waivers. - Clarity.

Subsection (a) states a waiver may be requested “as specified in procedures specified by the Department.” This provision is vague because it does not provide guidance on the content of a petition for waiver, the timeframe for action, or where the request must be submitted. We recommend that the Department specify the details of the procedures to be used to request a waiver in the regulation.

Senator Hardy Williams, Democratic Chair of the Senate Public Health and Welfare Committee, offered a comment to clarify Subsection (b)(4). To clearly state that the provision does not allow authorization of violations of either Federal or State statute or regulation, he recommends the addition of the word “or” before the word “regulation” the first time it is used, and a period be placed after the words “State statutes.” He further recommends the remainder of Subsection (b)(4) be deleted. We recommend the Department adopt the revisions.

Sections 3490.5(b)(2), (b)(3), and (d) use the term “agency.” The term “agency” is not defined in the regulation. We recommend using the term “county agency” to be consistent with the definitions.

3. Section 3490.13. Reports by employees who are required reporters. - Need; Clarity.

Section 3490.13 describes an interim step for required reporters who work in an institution, school, facility, or agency. Under Subsections (a) and (b) an employee, who is a required reporter, must notify his or her superior of suspected abuse. The superior then also notifies ChildLine. Subsection (c) of the regulation states that nothing in this section prohibits the employee from making the report directly to ChildLine. Section 6313 of the Act does not require a required reporter to notify a superior. However, Section 6352 does require school employees, including independent contractors and employees, to contact the administrator. The distinction made in the Act is not clearly reflected in Sections 3490.13(a) and (b). This could result in confusion for required reporters and their superiors who do not come under the definition of “school employe” in the Act. We recommend that the Department amend Sections 3490.13(a) and (b) to clarify who must report to an administrator.

We have a further concern with the reporting procedures. Since Section 3490.12 also requires the required reporter to call ChildLine, the regulation requires two calls to ChildLine to report one incident of abuse. We recommend that the Department clarify Sections 3490.12 and 3490.13 so that one call is clearly required and confirmed, but not two calls.

4. Section 3490.14. Privileged communications. - Clarity.

Section 3490.14 states privileged communications between a “professional person” required to report and the patient do not apply to situations involving child abuse. This provision is consistent with a portion of the language of Section 6311(a) of the Act. However, the Act does not define who is considered to be a “professional person.” A full reading of Section 6311 of the Act reveals only one exception to the requirement to report child abuse learned through a privileged communication, which is for an ordained member of the clergy. Otherwise, all other

“required reporters” must report regardless of whether they learned of the child abuse through a privileged communication or not. Our concern is that there are people who may not be considered a “professional person” in all instances, but may be under confidentiality requirements, such as some hospital personnel engaged in the admission, examination, care, or treatment of children.

We recommend two clarifications to the regulation to more clearly accomplish the intent of Section 6311 of the Act. First, we recommend replacing the phrase “professional person” with “required reporter” in Section 3490.14. Second, we recommend adding the exception for an ordained member of the clergy to Section 3490.14.

5. Section 3490.15. Taking a child into protective custody. - Consistency with Statute; Clarity.

Paragraph (a)(2) does not include the provision in 23 Pa.C.S. § 6315 which also permits a person specifically designated in writing by the director to take a child into protective custody. We recommend that the Department add this provision to Paragraph (a)(2).

6. Section 3490.31. Receipt of reports. - Clarity.

The last sentence of this provision states that ChildLine will only accept reports when the child is under 18 years of age at the time of the *report*. Section 6303(b) of the Act uses 18 years of age as a limit, but is directed at when the abuse occurred, not the time of the report. We recommend that the Department revise Section 3490.31 to state “...when the child is under 18 years of age at the time of the alleged abuse.”

The regulation says the Department *will establish* a single statewide number. Since the Department lists this number in the regulation, it is not clear why the Department needs this statement. It is our understanding that the number in the regulation is being used. We recommend that the Department rewrite Section 3490.31 to state “The Department *has established* a single Statewide....”

7. Section 3490.32. ChildLine reporting to the county agency. - Consistency with statute; Implementation procedures.

The provisions of 23 Pa.C.S. § 6334(a) require that if the residency of the subjects is a factor that requires cooperation of more than one county agency, the Department shall develop regulations to ensure the cooperation of those agencies in carrying out the requirements of Chapter 63. Representative Blaum commented that Subsection (d) needs to include timeframes for the coordination among counties because the county agencies need to meet the requirements to see the child within 24 hours and to complete the investigation within 30 days.

We agree and recognize that coordination between counties to meet the requirement to see the child within 24 hours will be difficult. It is important for the Department to provide detailed requirements for inter-county communication and responsibility to ensure that the requirements to see the child within 24 hours and to complete the investigation within 30 days are achieved. We recommend that the Department amend this provision with direction to county

agencies to ensure the timely cooperation of the county agencies in carrying out the requirements of Chapter 63.

8. Sections 3490.33. Files; 3490.34. Pending complaint file; and 3490.35. Statewide Central Register. - Duplication; Clarity.

Sections 3490.33, .34, and .35 discuss the same files, but are broken into separate sections. This requires the reader to read two sections to understand the content and procedures for pending complaint files or for the Statewide Central Register. The provisions of Section 3490.33 could be added to the provisions of Sections 3490.34 and 3490.35. We recommend that the Department consider consolidating these sections so that all of the provisions for each of these reports are in one section.

9. Section 3490.35. Statewide Central Register. - Need; Clarity.

This section states that ChildLine will enter a report in the Statewide Central Register “if there is sufficient documentation to justify entry into the Statewide Central Register...” It is not clear what parameters ChildLine will use to determine if there is sufficient documentation. It is also not clear why ChildLine would need to make a determination if a report was substantiated as founded or indicated.

We recommend that the Department delete the phrase “if there is sufficient documentation to justify entry into the Statewide Central Register.” in Section 3490.35. We question whether the Department’s concern is that the reported information comprehensive and accurate. If so, we recommend a subsection be added to the section which states information about to be entered should be verified as accurate and complete.

10. Section 3490.42. Performance audit and reviews - Clarity.

Commentators questioned the clarity of the requirement to “sufficiently document” why an investigation has not been completed within 30 days in Section 3490.42(b). We agree that this requirement is vague. We request the Department explain what information it would require to determine whether failure to complete an investigation within 30 days is “sufficiently documented.”

11. Section 3490.43. Issuance of Bulletins. -Reasonableness; Clarity.

Section 3490.43 states that the Department may periodically issue bulletins for the purpose of clarifying and interpreting this chapter and for the dissemination of practice standards as identified in performance audits. Commentators state it is not clear whether these standards would be suggested or mandatory, particularly since the standards have not yet been developed.

If the Department intends for standards to be mandatory or binding, it must establish the standards by regulation. A regulation would provide county agencies with a clear description of what is necessary for compliance, what activities are prohibited, and what standards the Department will apply in evaluating a county agency. By not promulgating a regulation, the Department could change the standards without adequate advanced notice or the opportunity to

offer meaningful public comment. Therefore, we recommend that the Department establish the standards by promulgating a regulation.

12. Section 3490.55. Investigation of reports of suspected child abuse. - Consistency with statute; Clarity.

Section 3490.55 outlines a county's responsibility for many aspects of an investigation. However, it does not include the provision from Section 6368(a) of the Act which states "during the investigation, the county agency shall provide or arrange for services necessary to protect the child while the agency is making a determination."

Section 3490.55 does not clearly state that services necessary to protect a child will be available during the investigation. We recommend that the Department add this statutory provision to Section 3490.55.

13. Section 3490.59. Action by the county agency after determining the status of the report. - Clarity.

Subsection (b) states that if a "report is unfounded and not accepted for services but the family is in need of services, the county agency shall advise the subjects of the social services available." This provision appears to be contradictory because it does not differentiate between services that would be provided by the county agency and other social services. If they are the same services, there is a contradiction in not accepting a family for services, but saying that services are needed.

We question the Department's intent. If the child abuse is unfounded, but the county agency knows of other services that may be beneficial to the family, the county agency will advise the subjects of the other social services available (i.e., outside the scope of Chapter 63). We recommend that the Department clarify the intent of this section in the final-form regulation.

We have a concern as well that Section 3490.59 does not reference services provided through general protective services. We recommend the Department add a separate subsection to Section 3490.59 which refers to services through general protective services. We further recommend a cross-reference to Subchapter C of this chapter.

14. Section 3490.61. Supervisory review and child contacts. - Economic impact; Clarity.

In Subsection (a), the Department is deleting the requirement that the county agency supervisor must review a report within 10 days of the receipt of the initial report. Since the provision states the purpose of the review is to determine the safety of the child, it is not clear why this provision is being deleted and why deletion of the provision is appropriate. We recommend that the Department maintain the requirement for review within 10 days, or explain the reason for deleting this provision.

Subsection (c) requires in-person contact with children and parents. Subsection (c) is not clear regarding who must make the in-person contacts. We recommend that the Department amend Subsection (c) to clearly state who must make contact.

It is also not clear how many cases would be affected by Subsection (c) and the associated staffing required. We request the Department to provide an estimate of the number of cases per year the Department anticipates would fall under Subsection (c), whether this provision would require more staff at a county agency, and the associated cost.

15. Section 3490.62. Repeated child abuse. - Protection of the public health, safety, and welfare.

Subsection (a) requires the administrator or supervisor to determine the appropriateness of the family service plan if there is a second indicated or founded incidence of child abuse. Subsection (b) requires a multidisciplinary team review if the child is a victim of three or more substantiated incidents of abuse. Representative Blaum urges the Department to convene a multidisciplinary team after the second incidence to prevent further abuse of an already abused child. We recommend that the Department consider this suggestion. Alternatively, the Department should explain how the proposed regulation sufficiently protects the safety of the child.

16. Section 3490.65. Staffing and staff qualifications. - Clarity.

Section 3490.65 requires a county agency to have sufficient, qualified staff and to be organized to perform the functions required by the Child Protective Services Law. However, as proposed, this section does not provide guidance on how this is to be accomplished or how it would be evaluated. Section 6361(b) of the Act requires the Department, by regulation, to set forth staff-to-family ratios for the various activities required of the county agency. We recommend that the Department revise Section 3490.65 by adding a reference to Section 3130.32 (relating to staffing requirements).

17. Section 3490.70. Expunction, sealing, and amendment of report by the county agency. - Consistency with statute; Clarity.

Section 3490.70 includes sealing a report. Representative Blaum commented that Section 6341 of the Act eliminated sealing of records. We recommend the Department delete its reference to sealing of records. Alternatively, the Department should explain the basis for including sealing of records in Section 3490.70.

18. Section 3490.71. Guardian ad litem or court designated advocate. - Clarity.

Section 3490.71 requires the county agency to cooperate with and provide information to a guardian ad litem or a court designated advocate. Commentators expressed concern that the regulation suggests that the county agency could not give the information to both. They suggest replacing the word “or” with the word “and.” We recommend that the Department amend this provision to clarify whether the information can be released to both the guardian ad litem and a court designated advocate. We also recommend that the Department add a definition of a court designated advocate as suggested by Representative Blaum.

19. Section 3490.104. Release of information to a subject of a report. - Consistency with statute; Due process.

Subsection (b) requires the county agency to release information to criminal defendants through the district attorney who will then decide what information will be released to the defendant. The Pennsylvania State Education Association commented that as a matter of due process, the criminal defendants are entitled to acquire the information directly upon request.

First, Subsection (b) is inconsistent with Section 6340(b) of the Act. The Act provides that at any time and upon written request, a subject of a report may receive a copy of all information except certain information delineated in the Act. This statutory provision has been interpreted by the Superior Court in *Com. v. Kennedy*, 604 A.2d 1036 (Pa.Super. 1992), *appeal denied*, 611 A.2d 711 (1992).

Second, we agree that the provision is a violation of due process. The defendant, in order to prepare an adequate defense, must be provided complete information without editing by the district attorney.

Finally, Subsection (a) equally applies to the subject of a report and a criminal defendant. There is no need to separately handle requests from “subjects of a report” and “criminal defendants.” Therefore, we recommend that the Department delete Subsection (b) from the final-form regulation.

20. Section 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. - Consistency with statute; Clarity.

Section 3490.105 includes sealing a report. Senator Williams commented that Section 6341(a)(1) of the Act eliminated sealing of records from the statute. We recommend that the Department delete the references to sealing of records or explain the basis for including them in Section 3490.105.

The title of this section also is not clear regarding whether it is a request by a subject prior to July 1, 1995, or whether it is an abuse report received by ChildLine prior to July 1, 1995. We recommend that the Department clarify the title of this section.

21. Section 3490.105b. Request by a nonperpetrator subject to amend an indicated report of child abuse received after June 30, 1996. - Consistency with statute; Clarity.

Sections 3490.105 and 3490.105a state the county agency will be notified if a request to amend or expunge a report is granted. However, Section 3490.105b does not have a similar provision. Section 6341(f) of the Act requires notice to the appropriate county agency. We recommend that the Department amend Section 3490.105b to include notice to the appropriate county agency.

22. Section 3490.106a. Hearings and appeals proceedings for indicated reports received by ChildLine after June 30, 1995. - Reasonableness; Consistency with statute; Clarity.

Section 3490.106a(g)(2) places the burden of proof on a perpetrator when the perpetrator appeals the decision of the Secretary. However, Section 6341(c) of the Act places the burden of proof for both perpetrators and school employees on the county agency. We recommend that the Department amend the regulation to be consistent with the statute, or explain how Section 3490.106a(g)(2) is consistent with the Act.

23. Section 3490.131. Definitions. - Consistency with the statute; Clarity.

Administrator

The definition in the proposed rulemaking defines an administrator as “the person, including an independent contractor, responsible for employment decisions in a school.” The definition is similar to the definition in Act Section 6351 of the Act (Students in public and private schools).

We note that the definition pertains to verification of the existence of child abuse and student abuse records. Therefore, it is more appropriate to use the statutory definition in Section 6354 of the Act (Background checks for employment in schools). In Section 6354, “administrator” is defined as “the person responsible for the administration of a public or private school, intermediate unit or area vocational-technical school. The term includes a person responsible for employment decisions in a school and an independent contractor.” We recommend the Department adopt the definition from Section 6354 of the Act.

Applicant

The proposed definition of “applicant” includes “an individual who applies for ‘employment’ as a school employee.” The definition also includes “an individual who transfers from one position as a school employee to another position as a school employee.”

First, we note that the statutory definition of “applicant” refers to an individual who applies for “a position” as a school employee. We question why the Department deviated from the statutory definition. How does application for “employment” differ from application for “a position?” We recommend the Department adopt the statutory definition.

Transfer

The Department has added a definition to the proposal for “transfer,” defined as “a change from one position to another.” We question the distinction the Department is drawing between “employment” and a “position.”

We request an explanation on the categories of employment which would be “positions.” We further request an explanation of whether a change from one position is a change within a district or school system, or within an individual school. We recommend the Department clarify the term to be consistent with Section 6355 of the statute. The statute exempts an applicant

who: 1) “transfers from one position as a school employe to another position as a school employe of the same school district or the same organization;” and 2) “has prior to the transfer, already obtained the official clearance statement.”

Direct contact with students

The proposal includes in its definition of “direct contact with students” access to children by a school employe who has “routine and unsupervised access” to children. We question what constitutes “unsupervised” access. We recommend the Department clarify whether this is limited to access without the presence of others or whether an actual supervisor must be present. We further recommend clarification of whether “routine” means on a scheduled basis, i.e. once a week, or whether “routine” could include contact that is unscheduled, but frequent.

School

The definition of “school” includes a subdefinition of “Public” which includes “school districts, intermediate units and area vocational-technical schools.” The Department did not include “charter schools” created through Act 22 of 1997. Section 1715-A(1) of Act 22 states that “charter schools are not exempt from statutes applicable to public schools other than this act.” Therefore, we recommend the Department add charter schools to its definition of “public school.”

24. Section 3490.133. Responsibilities of an applicant. - Reasonableness; Clarity.

This section contains responsibilities of applicants and procedures to apply for clearance. Subsection (a) states an applicant shall submit a request for a clearance statement to the Department on the form provided by the Department along with a check or money order. The last sentence states “the fee may not exceed \$10.” We question how the applicant will know what amount should be provided in the check or money order. For clarity, we recommend the Department add the phrase “in the amount specified on the application” at the end of the sentence instructing to provide payment by check or money order.

Additionally, we note that information about where the form can be obtained and the location where the form must be submitted is located at Section 3490.137. We suggest the Department incorporate this information into Section 3490.133.

25. Section 3490.134. Information relating to prospective school employes. - Clarity.

We have two concerns with this section. First, Subsection (a) states that the section does not apply to a person working in a school who is: 1) under 21 years of age; 2) participating in a job development or job training program; 3) employed for not more than 90 days. These provisions mirror Section 6356 (Exceptions) of the Act. However, Section 6356(1) lists the three categories with the proviso that Section 6355 (Requirement) shall not apply *to any of the following.* For clarity and consistency with the statute, we recommend the Department rephrase Section (a) of the proposal to state that it “does not apply to a person working in a school who meets any of the following criteria.”

Our second concern is with Subsection (b). Subsection (b) lists the exemptions where an administrator may employ an applicant on a provisional basis. The exemptions are similar to the exemptions in Section 6356(2) of the Act, with some exceptions. The criteria for provisional employment in the proposal do not consistently reflect the criteria in Section 6356(2) of the Act. In Subsection (b)(1) of the proposal, one of the exemption criteria states the applicant shall attest in writing by oath or affirmation that he has submitted or will submit within 24 hours a request for a clearance statement.

We believe Subsection (b)(1) conflicts with Section 6356(2)(i) of the Act which requires the applicant to demonstrate application for the official clearance. Therefore, we recommend that the Department delete the portion of Subsection (b)(1) which states “or will submit within 24 hours.”

SUBCHAPTER B. ABUSE OF STUDENTS IN SCHOOL

26. Section 3490.143. Definitions. - Consistency with the statute.

Administrator

The definition in the proposal at Section 3490.143 deviates from the definition in the Act in Section 6351. We recommend the Department conform the definition in its proposal to the statutory definition.

27. Section 3490.152. Responsibilities of administrators and school employes. - Clarity.

Subsection (a) states that, an administrator, and in certain cases a school employe, shall report abuse immediately to law enforcement officials and the appropriate district attorney. We question what “certain cases” a school employe would be required to report.

If there are requirements, other than the requirement in Subsection (b) for cases where the administrator is the employe suspected of abuse, those requirements should be stated. Otherwise, we recommend the phrase “and in certain cases a school employe” be deleted from the final-form rulemaking.

We have an additional clarity concern with this section. Subsection (c) requires that the verbal report be followed up with a written report on a form provided by the Department. We recommend information on how to obtain the form be included in the final-form rulemaking.

28. Section 3490.154. Release of information by a school employe including an administrator. - Consistency with the statute.

Section 3490.154(a) states that information in a student abuse report is confidential and may only be released by a school employe who made a report of suspected student abuse to those listed in Subsections (a)(1) - (a)(6). We believe the list is inconsistent with the confidentiality requirements of the Act.

Section 6352(a) of the Act requires a school employe to report abuse to the school administrator. In the case where the school administrator is suspected, the school employe is required to report to law enforcement officials and the district attorney. Section 6352(a)(3) of the Act states that school employe “may not reveal the existence or content of the report to any other person.”

Many of the parties listed in Subsections (a)(1)-(a)(6) of the proposal are not included in the confidentiality requirement in Section 6352(a)(3) of the Act. Included in the proposal are school officials in the course of conducting an internal investigation, appropriate persons in a licensing proceeding action, appeal proceeding, civil or criminal proceeding, and social service agency personnel. We request the Department provide its authority for allowing release of information by a school employe who made the report to those additional parties listed in the proposal. Otherwise, only those specified in Section 6352(a) should be included, i.e. administrator, law enforcement, and district attorney. Those not included in Section 6352(a) of the Act should be deleted from the proposal.

29. Section 3490.171. Receipt and investigation of reports of suspected student abuse. - Clarity.

We have three concerns with this section. First, the last sentence in Subsection (d) states that “if the Child Protective Service Investigation Report form is not received within 60-calendar days from the date the report was received by the county agency, the report shall be considered unfounded.” We question how the Department will know whether a report was actually unfounded. How will the Department know if paperwork was lost, but the report was indicated or founded? A county agency is supposed to file a report even if the determination is that the claim was unfounded. It would be reasonable for the Department to require a check to assure a valid report was not inadvertently lost. We recommend that if a report is not received within 60-calendar days, the Department establish a procedure to determine the actual status of a report rather than to consider it “unfounded” simply because a report was not received.

Our second concern is with the specific requirement for the oral report included in the Act which are not included in the proposal. Section 6353.2(a) of the Act requires that county agencies notify the department of the receipt of an oral report and lists the information that is to be included. We believe the information from the Act should be included in the rulemaking to provide guidance to counties for accurate and consistent reporting. We recommend the information at Subsection (a)(1)-(8) of Section 6353.2 of the Act be included in the Department’s final-form rulemaking.

Finally, we have a concern with Subsection (f) which states the county agency “shall submit a new Child Protective Service Investigation Report form to ChildLine as required in subsection (a) when a final status determination is made.” We find no reference to the report form in Subsection (a). We believe the reference should be made to Subsection (e) instead. We recommend the Department review the section and make the proper citation changes.

30. Section 3490.173. Notifications by the county agency. - Consistency with the statute.

This section contains the provisions for notifying the subject of the investigation of the existence of the report. Within 72 hours, the county is required to notify the subject of the report, the allegations of abuse, and the school employe's rights regarding amendment and expunction.

The Act, at Section 6353.2(d), contains a provision that notice may be reasonably delayed if notification is likely to threaten the safety of the student, or the county agency worker, or cause the school employe to abscond or to interfere with the investigation. We question why the Department did not include a provision similar to the statutory provision for reasonable delay in the proposed regulation. We recommend the Department include provisions for reasonable delay in the final-form rulemaking. Otherwise, it should provide justification for why it has not included the provision.

SUBCHAPTER C. GENERAL PROTECTIVE SERVICES

31. General Protective Services - Legislative intent; Consistency with the statute; Clarity.

The term "general protective services" is defined in Section 6302 of the Act as "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." Section 3490.223 defines "general protective services" as "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."

The proposed definition, however, narrows the services and activities that counties may provide to children and their families to only cases of neglect. The proposed definition of general protective services does not take into account other forms of nonabuse that may harm a child but that may not rise to the level of neglect, such as truancy or a household in which substance abuse exists. It appears the General Assembly intended that general protective services be broadly defined to include not only cases of neglect but cases where the risk of harm to a child indicated a need for assistance to prevent abuse. We question whether the Department intends to include nonabuse cases that are not defined as "neglect" under general protective services. We recommend that the Department amend the regulation to broaden the scope of general protective services as intended by the General Assembly or provide an explanation in the final-form rulemaking as to how the proposed definition is consistent with the intent of the Act.

Section 3490.223 of the proposal also contains a definition of "neglect." Although Act 151 refers to neglect, it does not define the term. A number of commentators expressed concern that the proposed definition of neglect too closely tracks the definition of "child abuse" which contains the element "serious physical neglect." Commentators believe that because the definition of neglect uses the same terms as is used to define "serious physical neglect," the definition is confusing. The commentators believe that caseworkers will be unable to differentiate between the

two definitions: serious physical neglect constituting child abuse and neglect constituting a need for general protective services.

We believe the Act establishes “degrees” of care of children. The failure to exercise the proper degree of care may constitute serious physical neglect or neglect depending upon the facts of the particular situation. Therefore, we do not believe that the use of the same terms in the two definitions is improper. However, we believe that the definition of neglect is being used in this section as a “catch-all” term. We recommend that the Department review the definition of neglect and the clarity concerns raised by the commentators and amend the definition in the final-form regulation accordingly.

We further recommend that the proposed heading for Section 3490.235, “Services available through the county agency for neglected children,” be revised to “Services available through the county agency for *families in need of general protective services.*”

32. Sections 3490.221 to 3490.242. Children alleged to be dependent due to habitual truancy and ungovernability. - Protection of the public health, safety, and welfare; Reasonableness; Clarity.

Sections 3490.221 - .242 do not address the responsibilities of county children and youth agencies under the provisions of 55 Pa. Code 3130.1 *et seq.* for children alleged to be dependent due to habitual truancy and ungovernability. The Juvenile Court Judges’ Commission has raised a concern that the regulations do not address requirements of the Public School Code at 24 P.S. § 13-1333(b)(4) which requires a child under 13 who does not meet attendance provisions of the Public School Code to be referred by the school district for services or possible disposition as a dependent child under the Juvenile Act. These children fall under the definition of “neglect” in Section 3490.223.

We agree that provisions for truancy should be addressed in the Subchapter C. We recommend the Department include provisions in its final-form rulemaking to direct counties in procedures for referrals from school districts and provision of services to children who are habitual truants and their families. If the Department determines not to include such provisions, an explanation should be provided in the comment and response document of why this is not appropriate.

33. Section 3490.234. Notifications. - Clarity.

Sections 3490.234(b) and (b)(1), state that if the “Department” accepts the family for services, it shall include in the notice the reasons why the “Department” accepted the family for service. The county is the level at which a family is accepted for service. We recommend the term “Department” be replaced with the term “County agency.”

34. Section 3490.235. Services available through the county agency for neglected children. - Economic impact; Clarity.

Similar to our concerns with Section 3490.61(c), Section 3490.235(g) requires in-person contact with children and parents. Subsection (g) is not clear regarding who must make the in-

person contacts. We recommend that the Department amend Subsection (g) to clearly state who must make in-person contact with the child and parents.

It is also not clear how many cases would be affected by Subsection (g) and the associated staffing required. We ask the Department to provide an estimate of the number of cases per year the Department anticipates would fall under Subsection (g), whether this provision would require more staff at a county agency, and the associated cost.

SUBCHAPTER D. GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES AND GENERAL PROTECTIVE SERVICES

35. Section 3490.321. Establishment of standards for a risk assessment process. - Clarity.

This section is not clear regarding whether the Department envisions an ongoing process to develop risk assessment, or whether risk assessment processes will vary between county agencies. Subsection (d) indicates the Department will use bulletins to modify the standards. Senator Williams expressed concern with this provision stating 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.

We find this entire process to be vague. Particularly in light of the provision in Section 3490.322(b) which requires each county agency to implement a risk assessment process approved by the Department on July 1, 1997. We recommend that the Department delete provisions which would allow amendments through bulletins. We recommend that the Department clarify its requirements for a risk assessment process in regulation.

36. Section 3490.331. Annual report on required activities. - Economic Impact.

The Department will report on the cost of the program in its annual report to the Governor and the General Assembly required under 23 Pa.C.S. § 6347. One commentator believes that some costs have not been factored into their budgets. As a result, the commentator believes the fiscal impact to the public sector is underestimated and consequently, the published appropriations for payments to counties will not reflect their actual costs. Another commentator believes that the costs of required medical examinations have not been factored into needs-based budgets. We recommend that the Department explain how it intends to calculate costs of the program in its annual report and how the calculations will represent the most accurate costs experienced by the county agencies.

37. Section 3490.401. Intercounty transfer of cases. - Protection of the public safety.

Subsection (f) provides that when a family moves to another county, the referring county shall telephone the receiving county. The receiving county is only required to accept and keep the information on file if the child or parents are subsequently referred to the receiving agency. Members of the House of Representatives Aging and Youth Committee's Select Subcommittee (Representatives True, Miller, Santoni, Sturla, Egolf, and Benninghoff) submitted a letter

expressing concern with this provision. The Representatives believe the receiving agency should be required to pursue the matter. The representatives suggested the Department should add requirements that outline the obligation of both counties to work towards locating the family to complete the investigation and permit the receiving county to accept the family for services. We agree that the regulation does not sufficiently protect the safety of the child in the event of an intercounty transfer. We recommend that the Department amend this provision to require the county agencies to complete the investigation and, if found necessary, begin services without additional delay.