



Original: 2075

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Chairman of the Board  
Joseph Vignola, Chairman of the Board

September 25, 2001

Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, PA 17101

Attention: Chairman McGinley

This letter addresses the final form regulations submitted by the Department of Health, amending the physical plant standards for drug and alcohol facilities (Title 28, Health & Safety; Part V. Drug and Alcohol Facilities and Services, 28 PA Code CHS 701, 705, 709.711, and 713).

These regulations were seen for the first time by this agency on September 24, 2001, along with the comments to the provisions. It was noted in these comments that the fiscal impact on facilities will be minimal, and that the results would be minimal when compared to the entire treatment field. Please note that this agency would lose in its residential treatment facility, 38 beds of a total current bed capacity of 187, that is a full 20%. Of these 187 beds, 55 are reserved for our women's program, a reduction of 10 beds would result, which is 18% of bed capacity.

This is a potential loss of \$3078 per day in revenue, which extrapolates to \$1,123,470 per year. Even if an 80% occupancy figure is used, the potential loss per year would be \$898,776. When one considers that the same number of three-shift staff must be maintained to monitor the reduced bed capacity, no savings can be achieved, and the reduction in income would not be minimal at all; indeed the reduction would be quite serious.

It should be noted that in a treatment facility, clients are not encouraged to isolate in their rooms; rather they are attending therapy, meetings and learning to interact with their peers. The hours spent in a bedroom are only for night time sleeping. Many of DRC's bedrooms accommodate three people at present, and are only 2 sq. ft. less than the proposed minimum per person. This means loss bed



Page Two  
September 25, 2001

capacity. Please note also that DRC's current occupancy meets Licensing and Inspection guidelines and the American Correctional Association guidelines.

The extra space requirement, reduced bed capacity and loss of income which this regulation would cause does indeed have a negative impact on individual treatment facilities throughout the system. Whether or not the "... result would be minimal when compared to the entire treatment field..." is meaningless to each individual agency who stands to suffer irredeemable losses.

Your consideration of the above comments is appreciated.

Yours truly,

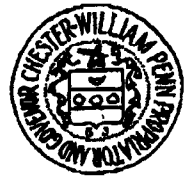
A handwritten signature in cursive script that reads "Kathleen White".

Kathleen White

cc: Ms. Melanie Brown, Executive Director  
Ms. Deb Beck, DASPOP  
Mr. John Hair, Department of Health  
Mr. Mark Bencivengo, CODAAP



# THE COUNTY OF CHESTER


**COMMISSIONERS:**

Colin A. Hanna, Chairman  
 Karen L. Martynick  
 Andrew E. Dinniman

**KIM P. BOWMAN, M.S.**  
 Executive Director

**DEPARTMENT OF DRUG AND ALCOHOL SERVICES**

Government Services Center, Suite 325  
 601 Westtown Road  
 P.O. Box 2747  
 West Chester, PA 19380-0990

**ADMINISTRATION:**

Phone: 610-344-6620 Fax: 610-344-5743

**CASE MANAGEMENT:**

Phone: 610-344-5630 Fax: 610-344-5436

September 14, 2001

Original: 2075

Fiona Wilmarth  
 Independent Regulatory Review Commission  
 333 Market Street, 14<sup>th</sup> Floor  
 Harrisburg, PA 17101

Dear Ms. Wilmarth:

I am writing to provide comment on the final form regulations submitted by the Department of Health, amending the physical plant standards for drug and alcohol facilities (Title 28, Health & Safety; Part V. Drug and Alcohol Facilities and Services; 28 PA Code CHS 701, 705, 709, 711, and 713).

### Loss of Treatment Beds

Regarding the residential requirements, the regulations as submitted still include provisions that cause considerable alarm. Despite these concerns being raised in the initial comment period there is no evidence that a substantive analysis of the impact these regulations would have on the availability of treatment has occurred. Of primary concern is that these regulations will result in the loss of treatment beds. In Chester County alone we will lose a minimum of 12 beds and as many as 26 beds. This represents losses in 3 of 5 programs we have in the County. Of these, at least 6 and as many as 20 are women's beds in the women with children's programs. It is hard to imagine that similar scenarios would not be repeated in other programs in the Commonwealth.

Unfortunately the Department's response to the comments indicate a lack of understanding of this impact. In response to concerns raised about the square footage requirement, the response inaccurately indicates that "This regulation will not affect programs with women and children." The impact in just one of our women with children's program is a loss of 4 women's beds or 33% of their total capacity. This would in turn increase their per diem rate by \$70. Although the per diem increase concern was raised in the initial comment period there is no response to it by the Department.

### Financial Impact

The loss of beds also results in the loss of additional treatment slots due to increased costs. The county contracted per diem rates are based on the total costs of

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 COUNTY OF CHESTER

the program divided by the available beds. This provides the program with a break-even rate. If the number of available beds decreases, the costs for the remaining beds increase. As a result we treat less people for the same amount of money.

**Based on a loss of only 12 beds, there will be a \$625,000 increase to treat the same number of clients. This \$625,000 translates into 144 clients that would not receive treatment based on our average cost per client for rehab.**

An additional ripple effect is the probable loss of entire programs. As previously stated, the program's rate is based on the actual expenses of the program and allows them to break even. While a reduction in beds would increase the program's rate, our experience has been that our publicly-funded treatment program does not receive a per diem rate increase in their HealthChoices contracts as their program costs go up. This is already causing problems for the programs. Increasing their costs due to a loss of beds would result in their not being able to cover their expenses; making it difficult, if not impossible, to keep the program open.

### **Is There a Need to Change?**

The Department indicates that these regulations are being promulgated in response to health and safety concerns; however, they do not provide any detail regarding the number of adverse incidents that have occurred. These regulations will result in a loss of treatment beds. Given the damage that we know occurs to individuals, families, and communities when addiction is untreated, it seems essential that any reduction in capacity is well researched and the need clearly substantiated with data.

The response to the comments by the Department regarding square footage state that to require less would be "detrimental to the treatment and rehabilitation process". There is, however, no reference to what research this statement is based on. In drug and alcohol treatment the time spent in one's bedroom, besides the hours one is sleeping, is minimal by design. The residential drug and alcohol treatment community itself is a large part of the therapy. The client's interaction within the community is emphasized and client's spending large amounts of time isolated in their bedrooms would be counterproductive.

The response also indicates an attempt to make these regulations consistent with those of other Departments. While I embrace the need for consistency in regulation when appropriate, it should not be done purely for consistency at the expense of clinical appropriateness and system stability. Additionally, it is usually only logical when you are looking at like programs. Residential drug treatment programs are not similar to residential programs in other systems. First and foremost, they are treatment programs, not housing programs, which is a significant difference. Additionally, residents in drug and alcohol treatment are transient, as compared to those who may be in residential housing programs in other systems. In the drug and alcohol system, long-term treatment is by and large only 3-6 months and most residential treatment programs are actually 30 days or less.

### **Other Concerns**

In addition to the square footage requirement, I am also concerned about the kitchen requirement [705.7 (1)]. Many programs with individual DOH facility numbers

are parts of larger buildings or campuses. In these cases a central kitchen is used for all food preparation. How will this regulation be interpreted? If the kitchen must be in the licensed facility a second women with children's program in Chester County would be affected. They are part of a larger campus that has a central kitchen. If the facility itself were required to have a kitchen, we would lose 17 women's beds as well as those for their accompanying children.

The regulations further require that facilities serving children provide access to outdoor recreational space and equipment. We are concerned with the interpretation of these regulations for programs in urban settings. We have a women with children's program in an urban setting that does not have ground space on the property, but does have several parks within walking distance that are used for outdoor recreation. We are concerned that this regulation be clarified to determine if access does not mean on-site.

Regarding the non-residential fire drill requirements I am concerned about the increased frequency required. The frequency of outpatient client attendance typically is one visit per week or every two weeks. Therefore, most clients will not benefit from a drill; it is really the staff knowledge and practice that is essential. While most clients would not benefit from the drill those that participate have their treatment significantly disrupted. If the client were only at the clinic for an hour they would benefit little from a session that is interrupted by a fire drill. Additionally, with each fire drill clients have to evacuate into areas that are often very public which impacts on their privacy and confidentiality. This is particularly true when treatment offices are in larger office buildings/parks.

Finally, I would like to express my appreciation to the IRRRC for notifying me of the filing of these regulations. Had I not been notified by the IRRRC, I would not have been aware that the final form regulations had been submitted, given the time that has passed since I commented on the proposed regulations (1999).

Sincerely,



Kim P. Bowman

KPBBew

Cc: Niles Schore, Executive Director  
Deb Beck, DASPOP  
John Hair, Dept. of Health



# THE COUNTY OF CHESTER



COMMISSIONERS:  
Colin A. Hanna, Chairman  
Karen L. Martynick  
Andrew E. Dinniman

DEPARTMENT OF DRUG AND ALCOHOL SERVICES  
Government Services Center, Suite 325  
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KIM P. BOWMAN, M.S.  
Executive Director

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## FAX

2001 SEP 14 PM 2:50  
REVIEW COMMISSION

Date 9-14-01

Number of pages including cover sheet 4

To: Fiona Wilmarth

From: Betty Wade C/O Kim Bowman

Phone \_\_\_\_\_

Phone 610/344-6620

Fax Phone (77) 783-2664

Fax Phone 610/344-5743

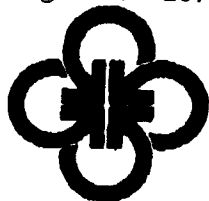
CC: \_\_\_\_\_

**REMARKS:**

Urgent     For your review     Reply ASAP     Please comment

Hard Copy to Follow: Yes:  No: \_\_\_\_\_

Original: 2075



**GAUDENZIA, Inc.**

106 W. Main Street, Norristown, PA 19401 (610) 239-9600  
FAX: (610) 239-9324

A United Way Donor Option Agency

Robert P. Kelly  
Chairman of the Board

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

Michael Bayson  
Counsel

**To:** Fiona Wilmarth, Analyst  
IRRC

**From:** Gaudenzia, Inc.

**Date:** September 11, 2001

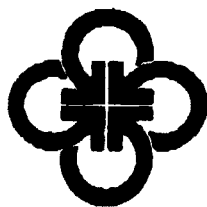
**Rc:** **Proposed Physical Plant Standards Drug & Alcohol  
Facilities & Services Published, PA Bulletin Vol 29,  
No. 46 - November 13, 1999 - Final Form August 24, 2001**

2001 SEP 12 PM 12:16  
 INDEPENDENT REGULATORY REVIEW COMMISSION

Enclosed are three letters, dated September 11, 2001, September 10, 2001 and December 13, 1999 commenting on the proposed regulations of 1999 and the final form regulations set to the appropriate Legislative Committees & the Independent Regulatory Review Commission on August 24, 2001.

On behalf of Gaudenzia and several other providers we ask for your support on our comments to the final form regulations.

A hearing before the Independent Regulatory Review Commission has been scheduled for 10:30 a.m., September 20, 2001 in the IRRC offices at 333 Market Street, Harrisburg, Pennsylvania. If you wish to testify you should contact the IRRC directly at (717) 783-5417.



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FAX: (610) 239-9324

Robert P. Kelly  
*Chairman of the Board*

Michael Hark, M.P.S.  
*President/Executive Director*

Michael Baylson  
*Counsel*

A United Way Donor Option Agency

September 11, 2001

Independent Regulatory Review Commission  
333 Market Street  
Harrisburg, Pennsylvania 17101

Attention: Fiona Wilmarth, Analyst  
Fax: (717) 787-1339

Re: Proposed Physical Standards

Dear Ms. Wilmarth:

On September 10, 2001, I wrote you voicing our difficulty in obtaining the final proposed regulations for Physical Plant Standards for Section 705, Part v. Drug and Alcohol Facilities and Services. Permit us to summarize. On November 13, 1999 the Department of Health proposed new physical plant standards for drug and alcohol facilities. Those proposed regulations were published in the Pennsylvania Bulletin Vol 29, No. 46 dated November 13, 1999. Thereafter on December 13, 1999 Gaudenzia responded with comments and sent those comments to the Independent Regulatory Review Commission and John Hair, Director, Bureau of Community Program Licensure and Certification, Department of Health. Since that time we have not been informed of the status .

On August 24, 2001 the Department of Health submitted a copy of the final-form regulations to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

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Page 2

Not until late afternoon on September 10, 2001 were we able to obtain a copy of the final form regulations. On September 7, 2001 we did receive a filing document with comments and responses. Many of the comments were taken verbatim from our letter dated December 13, 1999.

We understand that there are regulatory time frames and that this letter is at the eleventh hour. Although, we are sure that the mandates of the Regulatory Review Act have been properly followed, we question whether that intent of fairness and public comment has been properly addressed.

The final form regulations had been sent to the appropriate Legislative Committee while the Legislative is in recess many other people are on vacation during the last two weeks of August. In addition, Telephonic Communications to the Department of Health searching for the final form regulations was not productive. The Departmental of Health referred to the 1999 proposed regulations and not the final form regulations that we received the afternoon of September 10, 2001.

Below are our comments. Our comments in our letter of December 13, 1999 remain applicable.

First, we would direct your attention to the substantial changes made to the proposed regulations. Do such substantial changes create new proposed regulations which should be published in the Pennsylvania Bulletin?



GAUDENZIA

Page 3

Does the publication of November 13, 1999, together with substantial changes meet the standard of the Regulatory Review Act.

The Section which was changed the most is Sleeping Accommodations, 705.5. Numbered paragraphs have been changed, so a comparison between the November 13, 1999 proposed regulations and the final form regulations is difficult. The subject of the comments below are for the final form regulations. Regulation 705.5 (b) states as follows:

Each shared bedroom shall have at least 60 square feet of floor space per resident measured wall to wall, including space occupied by furniture. When bunk beds are used, each bedroom shall have at least 50 square feet of floor space per resident measured wall to wall....Each single bedroom shall have at least 70 square feet of floor space per resident measured wall to wall, including space occupied by furniture.

This regulation does not consider the impact on current facilities and the per diem costs increase to the Commonwealth. The Department of Health response is vague. Where is the research by the Department of Health's showing the number of current beds that will be lost if this regulation becomes law? The Department states in its response: "It is not known how many beds, if any, will be lost at existing facilities....It is believed, however, that the actual number and amount will be relatively small compared to the total number and amount within the entire field." What did the Department of Health mean by that statement? The answer is quite simple. The Department does not know the impact of this regulation on current facilities.



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Facilities with publicly funded clients receive per diem rates calculated on the number of beds in the facility. If the number of beds decreases, the per diem costs increases. The Commonwealth will treat fewer clients at high rates. If the rate is not increased, those facilities required to have fewer beds will discontinue operation.

The suggestion by the Department of Health was that the increase in resident space will address the current overcrowding issue. We question the Department's assumption of overcrowding. If there is "overcrowding" do we reduce the beds and have more active addicts on the streets?

In its response the Department states, "Based upon comments received, it is estimated that relatively few facilities will not meet these square footage requirements." Let's analyze this statement coupled with the previous statement by the Department of Health:

- (1) Overcrowding issue
- (2) Will effect relatively few facilities

These two comments seem to contradict each other. The Department of Health wants to change the square footage requirement for change sake. It has no real data on the number of beds to be lost, the increase in the per diem costs or the number of people who will not receive treatment.

Most important, the final form regulation at Section 705.1 (2) requires that each residential facility shall "have a Certificate of Occupancy from the Department of Labor and Industry or its local equivalent."



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Doesn't this certificate of occupancy resolve questions the Department of Health may have about overcrowding, and safety issues? Is this regulation necessary in light of the Certificate of Occupancy requirement?

We would also comment on Section 705.5 (c) which reads "No more than four residents shall share a bedroom." The final form regulations exempts this section for facilities licensed prior to the effective date of the Chapter. However, the Department of Health states that this regulation will not effect programs with women and children. The response states as follows:

This regulation will not affect programs with women and children.

While children are considered residents, and children are kept with the mother; most facilities limit the number of children to 2 and on a limited basis, 3. No facility currently has women with more than 3 children. There are 13 facilities that treat women with children and there is consensus that program growth in this area is not anticipated

This is an oversimplification. First, the research clearly indicates that dormitory style living arrangements provides women with the added monitoring of their peers to help them with controlling any impulses to use harmful disciplinary practices. The final form regulation would result in each woman having a single bedroom. A women with two children and another women with one child could not share a bedroom because the total residents would be five. When planning any renovations or expansion in the future, providers will have to provide a single bedroom for each woman.



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This final form regulation eliminates any expansion or renovations of existing women and children programs and eliminates any future growth for these programs or new programs.

Again, the requirement of the Certificate of Occupancy eliminates the need for the regulation.

Our final comment relates to Section 705.7 Kitchens. The final form regulation requires that each residential facility shall have a kitchen. Many providers have more than one licensed facility housed on a campus or a single structure that share a common kitchen and dining area. This regulation would prohibit the sharing of a common kitchen and dining area in these instances. While the need for any kitchen regulations is questionable because of other state and local health regulations, this regulation would result in the immediate closure of several facilities which share kitchens on a campus or a single structure.

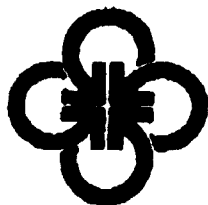
To summarize, many of these final form regulations are not necessary and do not enhance the health and safety of the residents in drug and alcohol programs. The analysis by the Department of Health in the preparation of these regulations is superficial as evidenced by the Regulatory Analysis Form. The reduction of total bed capacity and increased per diem costs to the Commonwealth has not been adequately reviewed by the Department of Health.

We intend to comment further on these regulations at a hearing to be held by the IRRC.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael J. Moyle".

Michael J. Moyle  
Director of Fiscal & Corporate Operations



**GAUDENZIA, Inc.** 106 W. Main Street, Norristown, PA 19401 (610) 239-9600  
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Robert P. Kelly  
*Chairman of the Board*

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

Michael Baylson  
*Counsel*

September 10, 2001

**Independent Regulatory Review Commission**  
333 Market Street  
Harrisburg, Pennsylvania 17101

**Attention: Fiona Wilmarth, Analyst**  
Fax: (717) 787-1339

Dear Ms. Wilmarth

We are responding at this late date because we have recently been informed that the proposed regulations published nearly two years ago, have been forwarded to you in final form on August 24, 2001.

On December 13, 1999 we responded to the proposed regulation to you and Mr. John Hair, Director, Bureau of Community Program Licensure and Certificate. A copy of that letter is attached for your review.

Several of our comments in that letter have been used verbatim in the comments made by the Department of Health. That document is dated August 16, 2001. The Department of Health has responded to those comments and have made changes based upon both comments and their responses.

As of 2:00 p.m. this day, September 9, 2001, we have been unable to obtain a copy of the final form regulation sent to you and the Legislative Committees on August 24, 2001. Therefore, it is not possible for us to comment on the proposed changes to the regulations offered by the Department of Health. This problem raises the issue of fairness in the promulgation of these regulations.



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Since December 1999, we have not been informed of the status of these proposed regulations. When we do discover that the process has been jump started, our ability to review the final form regulations has been surpassed because we are not able to retrieve a copy of the final Regulations from the Department of Health.

Nevertheless, we wish to reiterate our comments in our December 13, 1999 letter. We would also add the following to the response of the Department of Health.

The Department of Health states that "this regulation (Section 705.5) will not affect programs with women and children. As proposed in November 1999, existing facilities were exempt from the proposed regulation of "no more than four residents may sleep in one bedroom." The Department of Health's response does not take into consideration the research available.

Research clearly indicates that dormitory style living arrangements provides women with the added monitoring of their peers to help them with controlling any impulses to use harmful disciplinary practices. Women and Children programs should be exempt from the regulation of no more than four residents per bedroom. Not only should existing programs be exempt, but also new programs for women and children. The Department of Health comments that the program growth in this area is not anticipated, is not well funded. Growth in these programs is limited by lack of funding and not need.

The Department of Health's response to the "grandfathering" clause is not fided. The Department suggests that "grandfathering" would not address the current overcrowding issue. Licensed Programs have Certificates of Occupancy to operate.



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A Certificate of Occupancy takes into consideration the health and safety requirements of the occupants. Is the Department of Health attempting to second guess the occupancy requirements of the Certificate of Occupancy?

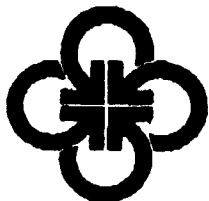
We have other concerns, but without the final form regulations, our comments may not be appropriate. Hopefully, we will be able to secure a copy of the final form regulations within the next few days. However, we are concerned that we may not have an adequate opportunity to respond.

Sincerely yours,



Michael J. Moyle  
Director of Fiscal and Corporation Operation





**GAUDENZIA, Inc.** 106 W. Main Street, Norristown, PA 19401 (610) 239-9600  
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Robert P. Kelly  
Chairman of the Board

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

Michael Baylson  
Counsel

A United Way Donor Option Agency

December 13, 1999

John Hair, Director  
Bureau of Community Program  
Licensure and Certification  
Department of Health  
132 Kline Plaza, Suite A  
Harrisburg, PA 17104

Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

**Re: Proposed Physical Plant Standards PA Bulletin, Volume 29, November 13, 1999**

Gentlemen:

We are responding at this late date because we received notice of the proposed regulations only recently. We have several licensed facilities and none of these facilities received the notice.

We have reviewed the proposed regulations amending physical plant standards for residential and non-residential services. We believe that most of the amendments do adequately protect the health and safety of the clients being served but, do have several concerns with several sections.

We do wish to comment on the following Sections together with some general comments:

**705.5 (a) (5) In bedrooms, a residential facility shall furnish the following for each resident.**

**(5) A chest of drawers**

**(6) Closet or wardrobe space with clothing racks and shelves accessible to the resident**

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Page 2

- 705.5 (b) For each resident sharing a bedroom, the residential facility shall provide a minimum of 60 square feet of space per bed, including space occupied by furniture. For each resident occupying a single bedroom, the facility shall have a minimum of 80 square feet of bedroom space, including space occupied by furniture**
- 705.5 (c) No more than four residents may sleep in one bedroom**
- 705.5 (d) When a residential facility uses bunk beds, each mattress shall be positioned to allow each occupants to sit up in bed.**

Section 705,5 (b) requiring a minimum of 60 square feet of space per bed, does not exempt existing facilities. Other regulatory agencies require much less square footage. If these regulations are made effective we would have at least three facilities unable to meet the requirement. The population of these facilities would be reduced by one-third immediately. These facilities have been licensed for a certain number of residents. This regulation conflicts with the current licensing capacity of the facility. More importantly this regulation would decrease the number of available treatment beds within the Commonwealth. Those operating at less capacity would have increased per diem costs. In essence, it would cost more per day to treat an individual and fewer individuals will receive treatment at the same costs to the Commonwealth as before these regulations.



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Page 3

We recognize that Sections 705.5 (c) concerning four residents to a bedroom exempts existing facilities. However, in the case of Women and Children facilities where the children are residents with their addicted mother, it is often clinically appropriate to have the children in the bedroom with the mothers, thus increasing the number of individuals in excess of four.

The standard would result in future Women and Children programs being forced to provide bedrooms which would accommodate fewer than four women residents because the children would have to be counted with the bedroom number. This regulation would result in higher cost of construction which could not be adequately reimbursed through a fee for service arrangement.

Many of the proposed regulations do protect the safety and health of the resident of the facilities. However, several of the regulations clearly indicate that the writers of the regulations lack on the job experiences with these drug and alcohol programs. We agree that these regulations may affect 60,000 individuals but, disagree that all these individuals will benefit. These regulations result in the decommissioning of available beds thereby decreasing the availability of treatment services to those in need.

We also disagree with the comment regarding Fiscal Impact. The costs to the Commonwealth would be substantial. While available beds would decrease, the per diem costs of each bed would increase proportionately. To replace these beds is difficult <sup>HE</sup> not impossible. The phrase "Not In My Neighborhood" is imperative. Zoning for Drug and Alcohol facilities has



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Conti.

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become more difficult each year. In some cities and townships the establishment of a drug and alcohol facility is impossible. When zoning is permitted, it is usually in neighborhoods with older buildings making renovations very expensive. Please note that applicable city fire and safety regulations do apply and these facilities do not operate without a Certificate of Occupancy. If a township or city issues a certificate of occupancy why not accept this as are proof that fire and safety issues have been adequately addressed.

In Summary, we could comment at length of several of these regulations but we believe that public hearing should be held so that all interested parties can be heard. We believe that the intent of the proposed regulations is to protect the health and safety of those persons <sup>5</sup> being served. However in several instances the proposed regulations have the opposite effect. Treatment slots will be decreased and the costs of treatment will increase

Sincerely yours,

  
Michael Harle, President