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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

January 14, 2000

Honorable Robert Zimmerman, Jr., Secretary
Department of Health
802 Health and Welfare Building
Harrisburg, PA 17108

Re: IRRC Regulation #10-154 (#2075)
Department of Health
Drug and Alcohol Facilities and Services

Dear Secretary Zimmerman:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact James M. Smith at 783-5439.

Sincerely,

Robert E. Nyce
Executive Director

REN:wbg

Enclosure

cc: John C. Hair
Cheryl D. Williams
Office of General Counsel
Office of Attorney General
Lee Ann Labecki

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

DEPARTMENT OF HEALTH REGULATION NO. 10-154

DRUG AND ALCOHOL FACILITIES AND SERVICES

JANUARY 14, 2000

We have reviewed this proposed regulation from Department of Health (Health) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) 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 reasonableness, need, economic impact, health and safety and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Consistency with regulations of other Commonwealth Departments. – Consistency with the Statute; Economic Impact; Reasonableness; Need.

Section 921 of the Public Welfare Code (62 P.S. § 921(c)) requires Health to “establish standards for the safe and adequate care of individuals, not inconsistent with the laws of this Commonwealth and the rules and regulations of the various departments of the Commonwealth” Act 45 of 1999 (Act 45) repealed portions of the Fire and Panic Act (35 P.S. §§ 1221 - 1235) and directs the Department of Labor and Industry (L&I) to promulgate regulations to implement Act 45 within 180 days. Consequently, L&I is in the process of writing regulations which will replace the existing fire and panic regulations. In the development of the final regulation, Health should take into consideration Act 45 and, to the extent possible, the resulting L&I regulations.

Furthermore, some of the fire safety provisions in the proposed regulation are more stringent than the existing L&I requirements in 34 Pa. Code Chapters 55, 56 and 58. Although more stringent requirements may be appropriate for the population served by these facilities, Health should consider the fiscal impact and reasonableness of its regulation on new and existing facilities. Where Health’s final regulation exceeds the requirements of other departments, Health should justify the need for more stringent regulations.

2. Chapter 705. Physical plant standards. – Clarity.

The subtitles of Chapter 705 are dissimilar. The index lists the subtitle “Physical plant standards for nonresidential services.” The body of the regulation uses the subtitle “Nonresidential services.” The subtitles also use the word “services” rather than “facility.” We suggest using the defined terms “Residential facility” and “Nonresidential facility” for subtitles to clearly establish the appropriate physical plant requirements for a facility.

3. Section 705.1. General requirements for inpatient non-hospital facilities (residential treatment and rehabilitation), and Section 705.21. General requirements for nonresidential treatment facilities. – Clarity.

Licensure

The Preamble and Section 705.1(c) discuss licensure of facilities. However, licensure is not included in the general requirements. Section 705.21 also provides general requirements without specific reference to licensure. For clarity, Health should amend Sections 705.1 and 705.21 to include a cross-reference to existing requirements for licensure found in 28 Pa. Code Sections 709.11 - 709.18.

4. Sections 705.2. and 705.22. Building exterior and grounds. – Need; Clarity.

Subsections (2)

These subsections require the grounds of the facility to be in “good condition.” The phrase “good condition” is unclear. How would the regulated community know whether their facility complies? Health should either add specific requirements for the grounds or delete the requirement that the grounds be in good condition.

Subsections (4)

Subsections (4) require removal of garbage “on a regular basis, at least once a week.” The phrase “on a regular basis” is unnecessary and should be deleted.

5. Section 705.3. Living rooms and lounges. – Clarity.

Subsection (1)

This subsection is vague. What is necessary to meet the criteria “appropriately furnished” and “which creates a relaxed and comfortable atmosphere”? Health should delete these phrases, or use standards that can be clearly understood and enforced.

6. Section 705.4. Counseling areas and office space. and Section 705.23. Counseling or activity areas and office space. – Clarity.

Subsections (1)

The phrase “adequate space” is unclear. Health should either delete the term “adequate” or use a standard that can be clearly understood and enforced.

Subsections (2)

These subsections are vague. What is necessary to meet the criteria “comfortable furnishings” and “which are appropriate for the intended purpose”? Health should delete these phrases, or use standards that can be clearly understood and enforced.

7. Section 705.5. Sleeping accommodations. – Reasonableness; Need; Economic Impact.

Subsection (a)

Subsection (a) has several vague requirements. Paragraph (1) requires bed frames to be of “solid construction” and “sized appropriately to the needs of the resident.” Paragraphs (2) and (3) use the term “comfortable.” Health should delete these phrases, or use standards that can be clearly understood and enforced.

Subsection (b)

Subsection (b) requires facilities to provide a minimum of 60 square feet of bedroom space per bed (including space occupied by furniture) for each resident sharing a room and a minimum of 80 square feet for single bedrooms. Representative O’Brien, Chairman of the House Health and Human Services Committee, commented that the square footage requirement is unreasonable. Senator Dent and Representative Mann urged Health to reconsider the impact of this provision. Several facilities commented that this requirement could cause facilities to eliminate beds and lose significant income.

Health states in the Preamble that existing facilities would be exempted from certain requirements which might impose costs too great for them to absorb and continue to function effectively. Health should explain:

- The need for this requirement and why the square footage requirements are not included with the “grandfather” exemptions in Section 705.1(c).
- How many currently licensed facilities would not meet the requirement in Subsection (b) based on their current population.
- How many beds would be lost to existing facilities and how much income would these facilities lose as a result of the proposed square footage requirements.

Subsection (j)

Subsection (j) should more directly state its requirements, such as “Bedrooms located in a basement shall meet the following requirements:”

Paragraph (1) uses the vague term “appropriate.” Health should delete this term.

Paragraph (3) requires two basement exits “each located reasonably remote from the other in a manner to reduce the possibility that both will be blocked in an emergency situation.” It is unclear how a facility would comply with this phrase. Health should amend this language to more clearly state its intent.

8. Sections 705.6. and 705.24. Bathrooms. – Clarity.

Water supply

Subsection 705.6(3) requires an “adequate” supply of hot and cold running water “to meet the needs of the residents.” What standard is established by the term “adequate” and the phrase “to meet the needs of the residents”? Health should delete this term and phrase, or provide a more definitive standard.

Location of bathrooms (nonresidential facilities)

Subsection 705.24(1) requires bathrooms to be “conveniently located throughout the facility.” It is unclear what the phrase “conveniently located throughout the facility” means. Is the intent to require a minimum number of bathrooms depending on the capacity of the facility? Health should amend this language to state a more definitive standard.

Consistent use of the term “bathroom”

Subsection 705.24(1) uses the term “lavatories.” Subsections 705.6(5) and 705.24(3) use the phrase “toilet and wash rooms.” For consistency, Health should use the term “bathrooms” in these subsections.

9. Sections 705.7. and 705.25. Kitchens. – Clarity.

Cabinet space

Subsections (1) require kitchens to have “adequate cabinet space for storage needs.” The term “adequate” is vague and should be deleted. If the intent of this provision is to ensure that nonperishable food items and kitchen utensils are stored in cabinets, the regulation should be revised to reflect this intent.

Storage temperatures for food items

Subsections (5) require all prepared food items to be “properly” refrigerated or stored. The term “properly” is vague and would be difficult for facilities to comply with. Similar requirements in the Department of Public Welfare’s (DPW) child residential and day treatment facilities regulations (55 Pa. Code § 3800.104(e)) specify that cold food must be stored at or below 40° F, hot food at or above 140° F, and frozen foods at or below 0° F. Health should consider including specific temperature storage requirements in the final regulation.

10. Sections 705.8. and 705.26. Heating and cooling. – Economic Impact; Need.

As written, Subsections (1) would require all facilities to have air conditioning to maintain an indoor temperature no more than 90 degrees. We have two concerns. First, do all existing facilities have air conditioning? Second, why is the use of fans excluded? Health should allow fans or explain the need for this requirement, and the economic impact on a facility that does not have air conditioning.

11. Sections 705.9. and 705.27. General safety and emergency procedures. – Clarity.

Subsections (4)

These subsections require each facility to “provide written procedures for staff and residents to follow in case of an internal or external emergency or disaster.” The difference between an “emergency” and a “disaster” is unclear. Furthermore, Subsections (4)(ii) refer to “emergencies,” and Subsections (5) refer to a “fire, other disaster or situation.” If there is a distinction between an “emergency” and a “disaster,” Health should define these terms in Section 701.1. If there is no distinction, Health should use a single term consistently.

Subsections (4)(i) require the written procedures to be developed with assistance from “qualified fire and safety personnel.” To improve clarity, Health should specify the credentials necessary to be considered “qualified fire and safety personnel.”

Furthermore, Health should clarify who reviews the procedures and when the review is conducted.

Subsections (4)(ii) require:

Procedures shall also include provisions for the transfer of residents and staff to a safe location within the residential facility for the evacuation of residents and staff when necessary, and for assignments of staff during emergencies.

This sentence is lengthy and unclear. It appears the “procedures” must address transfer of residents and staff, evacuation of residents and staff, and staff assignments during emergencies. These subsections would be clearer if these requirements were listed separately. Also, the transfer and evacuation procedures should address situations where the residents are impaired by drugs or alcohol.

12. Sections 705.10. and 705.28. Fire safety. – Reasonableness; Health and Safety; Clarity.

Subsections (a)

Subsections (a)(1)(ii) require facilities to maintain two exits on every floor. Each exit is to be “remote enough from the other to *reasonably ensure* that both will not be blocked in an emergency situation.” If the intent of Subsections (a)(1)(ii) is to prevent everyone from crowding one exit in an emergency, then Health could specify the number of exits required in relation to the number of occupants per floor. Health could also specify the minimum distance required between exits. Finally, the phrase “reasonably ensure” is vague and should be deleted.

In Sections 705.10(a)(1)(iii) and 705.28(a)(1)(iv), the term “guards” is vague. Health should define this term or use another term that more clearly indicates what is required on stairs, ramps, balconies and landings.

Subsections (b)

Subsections (b) require the facility to “maintain” smoke detectors and fire alarms, but do not state how quickly a malfunctioning alarm must be repaired. Section 3800.130(g) of DPW’s regulations require repairs to be made within 48 hours of when the smoke detector or fire alarm is discovered to be inoperable. Subsections (b) should specify that if the smoke detectors or fire alarms are inoperable, repairs must be completed within a specific timeframe.

Subsections (c)

These subsections should specify that if the fire extinguisher is inoperable, repairs must be completed within a specific timeframe.

Subsections (c)(4) require facilities to instruct all staff and residents in the use of fire extinguishers. A commentator noted that the primary responsibility of a resident in the case of a fire is to sound the alarm and then to get out. Instructing a resident in the use of a fire extinguisher implicitly requires a resident to use a fire extinguisher and may place the resident at risk. Health should reconsider the requirement for residents to be instructed in the use of fire extinguishers.

Subsections (d)

Subsections (d)(1) require a fire drill to be conducted every 60 days. Since the duration of treatment for some residents and clients of non-residential facilities may be less than 60 days, Health should consider more frequent fire drills. Alternatively, Health could require individual fire drill instruction for new residents. Health should also define “special incidents.”

Also, Section 705.10(d)(2) requires fire drills to be conducted at different times of the day and night. However, the regulation does not specifically require any drills to be conducted during sleeping hours. Health should consider periodically requiring a fire drill during sleeping hours.

Subsections (d)(3) require that personnel on all shifts be “trained to perform assigned tasks during emergencies.” Health should clarify what is included in the training and when the training must occur.

13. Sections 705.11. and 705.29. Child care. – Reasonableness; Clarity.

Subsections (1)

Subsections (1)(ii) require access to “suitable recreational equipment.” The term “suitable” is vague and should be deleted or replaced with more specific requirements.

Subsections (2)

Subsections (2)(ii) require safety screens for all windows. This requirement appears to be unnecessary for windows that do not open. Health should revise this requirement to apply to all operable windows.

Subsections (2)(iii) require protective caps for each electrical outlet within reach of small children. How is "small" defined? Basically, a child can reach all outlets. Because of the ambiguity of the language, Health should delete the phrase "within reach of small children" from these subsections.

Subsections (2)(iv) require facilities to secure storage areas where "potentially dangerous" substances are kept. Health should delete the phrase "potentially dangerous" or define it so that it can be clearly understood and enforced.