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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

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JUDICIARY
TOURISM & RECREATIONAL DEVELOPMENT

ORIGINAL: 2201

July 23, 2001

John H. McGinley, Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
Harrisburg, PA 17101

Dear Chairman McGinley:

The following reflects our questions and recommendations regarding Proposed Regulation #14-469 (Child Protective Services) that we submitted to the Department of Public Welfare.

(1) Section 3490.4 (Definitions)

With regard to the proposed "imminent risk" definition, the Department of Public Welfare indicates the Commonwealth Court held that the standard that the child would have suffered serious physical injury was too high a standard to maintain an indicated report. However, the Commonwealth Court's opinion in E.D. v. Department of Public Welfare says that:

(a)"...the agency's burden is more particularly described as establishing but for the beneficial intervention the child would have suffered severe pain or significant impairment of his or her functioning" and

(b)"...the evidence must show that the acts would have inflicted serious physical injury."

The opinion further states that this analysis is "in accordance with the Department's own proposed regulations and the common definition of 'imminent' found in dictionaries."

Is there ongoing litigation related to the E.D. v. Department of Public Welfare case or any similar cases? Given the court's acceptance of the Department's current OCYF Bulletin 3490-95-02 "imminent risk" definition as being within the scope of the Child Protective Services Law, we would like a detailed rationale and justification for the proposed "imminent risk" definition. Please discuss how the proposed definition remains within the scope of the CPSL.

In addition, please provide a specific explanation regarding how the proposed "imminent risk" definition differs from the current OCYF Bulletin "imminent risk" definition, particularly with regard to how it establishes a lower standard. Further, please give several examples of cases this definition would capture which are not included in the current definition.

Finally, the Committee is concerned about the impact a substantially expanded "imminent risk" definition might have on the effectiveness of county children and youth agencies. Therefore, we would like additional information on the Department's projections related to the numbers of child abuse reports, the cost, and the impact on staffing levels which are anticipated to result from the proposed expansion of the current "imminent risk" definition.

(2) Section 3490.34 (Pending complaint file and file of unfounded reports awaiting expunction)

The Department proposes to clarify in a new subsection 3490.34(e) that reports determined to be unfounded through the appeal process will be expunged immediately after the expiration of the appeal for the next level of appeal. Please provide information regarding when the Department currently expunges unfounded reports in these cases. How often are the Department's unfounded report determinations appealed, and to what level they are most commonly appealed? In addition, please outline the usual time frames for each level of appeal. If the appeal process for unfounded reports ever extends beyond the one-year-and-120 day maximum period currently established in statute for the mandated expunction of unfounded reports, what is the statutory basis for permitting the retention of these reports by the Department?

(3) Section 3490.106 (Hearings and appeals proceedings for reports received by ChildLine prior to July 1, 1995)

In subsection (h), what is the Department's rationale for its proposed shortening of the time limit from 30 to 15 days in relation to requesting the Secretary's reconsideration? Please explain the benefit the Department anticipates from the proposed change. The Committee notes that, both prior and subsequent to the adoption of regulations to ensure compliance with Act 151 of 1994, the regulations maintained a standard of 30 days for requesting the Secretary to reconsider the decision or to appeal the final order with regard to indicated reports received prior to July 1, 1995.

(4) Section 3490.106a (Hearings and appeals proceedings for indicated reports received by ChildLine after June 30, 1995) and Section 3490.192 (Request for a hearing from a school employee for indicated reports of student abuse)

Several organizations raised concerns about the existing regulation's subsection 3490.106a(f) and subsection 3490.192(f) and the Department's alteration of the time frames for hearings and appeals proceedings with regard to requests for report expunction. The Committee shares these concerns and would like an opportunity to more fully review the impact of the existing and proposed regulation in relation to the Department's new hearing rules. As such, please provide a copy of the Bureau of Hearing and Appeals new Standing Practice Order (SPO-Rev-01-HBG). In addition, please relate the SPO to the current appeal and hearing process for indicated reports, with specific information regarding the overall number of appeal cases and the length of time the Department takes to render decisions.

Thank you for your attention to our recommendations, questions, and requests for additional information. We look forward to continued work with you on the proposed regulations.

Sincerely,

Representative Jerry Birmelin, Chairman
House Children and Youth Committee

Representative Michael C. Gruitza, Minority Chairman
House Children and Youth Committee
JB/bjj