ORIGINAL: 2201

④
#14-469

Judith M. Lynch
County Executive

COUNTY OF ERIE
Department of Human Services
OFFICE OF CHILDREN & YOUTH
154 West Ninth Street
Erie, Pennsylvania 16501-1303
814/451-6600

John D. Petulla, M.S.W.
Director of Human Services

June 29, 2001

Ms. Cathy Utz
Department of Public Welfare
PO Box 2675
Harrisburg PA 17105-2675

Dear Ms. Utz:

I am in receipt of the proposed CPSL Regulation to release DPW from final administrative action within ninety days in Expunction Appeals requested by subjects of child abuse. As you are aware by my prior correspondence with the Department, I have been very concerned regarding the time frames imposed by the Standing Practice Order currently in effect through the Bureau of Hearings and Appeals.

The proposal to release the Department from the requirement that a final administrative action be completed within ninety days when the Appellant is an alleged perpetrator or school employee would greatly assist the county solicitors to both comply and prepare appropriately for the child abuse Expunction hearings. In my experience, the County is rarely, if ever, the initiator of an appeal. Therefore, restricting the current requirements of the SPO to situations where the County is the Appellant would greatly relieve the burden imposed by the current SPO. Therefore, I wholeheartedly support the proposal as it currently stands.

Thank you for the opportunity to review the proposed regulatory changes and to comment thereon.

Sincerely,

Catherine A. Allgeier, Esquire

CAA:jp

FILE

DEPARTMENT OF LAW

County of Allegheny

300 FORT PITT COMMONS BLDG.
445 FORT PITT BLVD.
PITTSBURGH, PA 15219
PHONE (412) 350-1120 - FAX (412) 350-1174

TERRENCE F. McVERRY
COUNTY SOLICITOR

March 6, 2001

Honorable Feather Houston, Secretary
Department of Public Welfare
PO Box 2675
Harrisburg, Pennsylvania 17105-2675

RE: Newly Promulgated Expedited Procedures
for Child Abuse Expunction Appeals

Standing Practice Order
Formal Appeals
Order No. SPO-Rev-01-PGH

Dear Secretary Houston:

I am the Manager of the Human Services Attorneys at the Allegheny County Solicitor's Office. In that capacity, I author this correspondence to you.

Our office recently received copies of the Standing Practice Order issued by the Bureau of Hearings and Appeals outlining new procedures for expedited child abuse expunction appeals and a draft of the Bureau's generic cover letter to OCYF attorneys. Based upon our review of the letter and order, I am expressing this office's strong objection to these new procedures and I am urging you to reconsider implementation of same.

The new procedures do not provide adequate preparation time for pre-hearing conferences and hearings on child abuse appeals and place an unreasonable burden on local child protective service agencies and their attorneys. Of greater concern, however, is the adverse effect we believe these new procedures will ultimately have on the safety and well being of the children of our county and the Commonwealth.

On a more specific basis, I would like to take this opportunity to compare and contrast the old "system" with the new one implemented on February 20, 2001.

Time allotted for preparation for pre-hearing conferences: Under prior procedures, the order scheduling the pre-hearing telephone conference was issued four to six weeks before the conference date. Adequately preparing for the pre-hearing conference, especially on pre-July 1995 appeals, was already difficult when our office had six weeks to prepare and will be much more difficult or impossible now. The new order provides a fifteen-day notice. This, in effect, gives our County a ten to twelve day notice because of mailing time, weekends and national holidays. During that short period, the OCYF attorney must locate and review the case file, gather exhibits, locate and interview witnesses (many of whom have moved, changed employers or are difficult to contact), determine if a guardian ad litem has been appointed for the child, and prepare for the conference. Many of the files, because of dependency proceedings and other issues, are in one of our regional offices and/or are comprised of several thick volumes, adding to our preparation time. Additionally, documents related to timeliness are often not in the case file, so the attorney must contact the ChildLine & Abuse Registry to address that issue prior to the conference.

Content of the pre-hearing conference: The expanded content of the pre-hearing conference now includes more detailed discussions of the issues, witnesses and stipulations. This is very troubling given the inadequate time provided for preparation. Generally speaking, identifying relevant facts, simplifying issues and providing a preliminary list of witnesses is an effective pre-trial approach to most proceedings, *but only if both parties are prepared to address those matters.* The extremely shortened period of notice will create difficulties for assistant county solicitors experienced in doing these appeals, let alone attorneys new to these proceedings and pro se litigants.

Scheduling the hearing: Under the previous procedures, our office contacted almost all witnesses prior to the pre-hearing conference to ascertain potential scheduling conflicts and to update addresses. Those witnesses included doctors, school nurses and/or psychologists essential in establishing that child abuse occurred. We also contacted the investigating caseworker regarding dates he or she was scheduled to appear at Juvenile Court proceedings, so that we could avoid those dates. I understand that, under the new procedures, the parties will have no input on scheduling the hearing and will, instead, be assigned the first available date on the Bureau's Pittsburgh calendar. We believe this will lead to many more motions for continuances being filed and, if those motions are not granted, will make it impossible for the County to prevail.

Time for filing Exhibit Lists and Witness Lists: Under the previous order, we had ten days following the pre-hearing conference to file our witness and exhibit lists. Our office has adhered to this deadline, sometimes through extraordinary effort, even though the Bureau often does not enforce this requirement when an appellant does not file pre-hearing pleadings and appears at the hearing with witnesses and exhibits. Under the new order, we have five *calendar* days to file our respective lists or risk having the pleadings rejected and, presumably, being prohibited from presenting those witnesses and exhibits at the hearing.

Applications for Issuance of Subpoenas: Under the previous order, hearings were scheduled not less than thirty days and not more than sixty days after the pre-hearing conference and motions and applications for issuance of subpoenas were due at least fifteen days prior to the hearing. Under the new order, requests for subpoenas on child abuse expunction cases must be submitted five calendar days after the pre-hearing conference. If the hearing is scheduled fifteen days after the pre-hearing conference, this gives little time for service, even if the subpoenas are signed and returned immediately. For witnesses who are difficult to locate and/or are avoiding service, serving the subpoena prior to the hearing may be impossible, rendering the hearing meaningless!

Because of the difficulty in locating caseworkers who are no longer with the County agency and examining physicians who have moved, we also anticipate that we will have to request more frequently that records be held open for the purpose of finding and deposing those witnesses, a costly extension of the proceedings.

Stipulations: The prior Order did not place an emphasis on the parties reaching preliminary stipulations at the pre-hearing conference and final stipulations prior to the hearing. The new procedures do. I agree that requiring pre-hearing stipulations could simplify and expedite the hearing process; however, directing that stipulations be reached at the pre-hearing conference is neither practical nor feasible in most cases. Often, the appellant is not represented or obtains representation just prior to the conference. Additionally, the attorneys in my office have very serious concerns about contacting any unrepresented appellant about stipulations prior to or after the pre-hearing conference. Most pro se litigants do not understand the concept of stipulations and are suspicious of any suggestions made by or on behalf of OCYF. Obtaining stipulations would be practical only when the appellant is represented by counsel and only if the time frames prior to and after the conference are expanded.

While the new procedures may be practical for an appellant's private attorney who has associates, paralegals and other support staff to assist with the case, they fail to take into consideration that most assistant county solicitors representing OCYF on child abuse expunction appeals have more than one case pending, several pre-hearing conferences and hearings each month, and assignments in addition to those at the Bureau of Hearings and Appeals. In Allegheny County, I have a relatively large staff yet will find the scheduling of these matters very difficult. I can not imagine the impact that these procedures will have on smaller counties.

I am aware that significant time delays in the litigation of child abuse expungement hearings are a serious problem. I know that this problem is due, in part, to the July 1995 amendments, requiring that appeals of indicated ChildLine Reports be filed within 45 days, as opposed to the unlimited time frames previously afforded potential appellants. However, I respectfully suggest to you that these new procedures appear to be a misguided attempt to remedy delays in internal reviews of ChildLine appeals by the OCYF Division of State Services and delays by the Bureau of Hearings and Appeals in issuing final determinations after a case is heard. Those delays are probably attributable to staff

shortages as well as inadequate deadlines established in DPW regulations. I believe that the Department of Public Welfare is attempting to unfairly shift the burden at meeting its mandated time frames onto the county agencies.

The administrative appeal process for child abuse expunction cases definitely was "broken", but the most effective aspect of the process was the procedure, including the deadlines, established by Pre-Hearing Official David Horwitz for scheduling the pre-hearing conference, conducting that conference and filing pleadings prior to the hearing. Unfortunately, in its attempts to comply with mandates set forth in DPW regulations, despite staff shortages for internal reviews and hearings on these appeals, the Bureau has chosen to implement changes which will only increase the need for additional staff and additional funding. Increasing staff at the OCYF Division of State Services and hearing offices and amending the regulations to include a more realistic time frame for the administrative appeal process would certainly have been a better approach to correct problems in the system. I foresee that motions practice will soar as assistant county solicitors and other attorneys who are unable to meet the unreasonable deadlines set forth in the new Standing Practice Order file motions for continuances. Appellate practice will also increase if those motions are denied.

Ultimately, and most dishearteningly, the real reason for the law and the procedure, the protection of our children, will inherently suffer as child abusers will most assuredly prevail more often in having indicated Childlines expunged, not on the merits of the case, but rather on technicalities imposed by the unrealistic procedures contained in Order No. SPO-Rev-01-PGH.

Accordingly, I respectfully request that your office and the Bureau review and reconsider the changes implemented on February 20, 2001.

Sincerely,

Patrick W. Quinn
Assistant County Solicitor
Manager, Human Services Division

PWQ:ks
cc: Terrence McVerry, Solicitor
Marc Cherna, Director, Dept. of Human Services
Marcia Sturdivant, Ph.D., Director, OCYF
Thomas E. Cheffins, Esquire
Jo Ann R. Lawer
Alexis Samulski, Esquire
Beatrice Longo, Esquire

COMMUNITY LEGAL SERVICES, INC.

1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700, Fax: 215.981.0434
Web Address: www.clsphila.org

ORIGINAL: 2201

June 2, 2001

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Comments to Proposed Regulations on Child Protective Services

IRRC Reference No. 2201

Dear Mr. Nyce:

Enclosed please find the comments of the Employment Unit of Community Legal Services in response to DPW's proposed amendments to Chapter 3490. We appreciate the opportunity to share our comments and concerns with you on these important issues.

If you have any questions, please do not hesitate to call me at (215) 981-3745 or my colleague Suzanne Young at (215) 981-3754.

Respectfully yours,

JANET F. GINZBERG
Staff Attorney

**Comments of Employment Unit of Community Legal Services, Inc.,
On Proposed Regulations About the Child Protective Services Law**

The following are comments concerning the proposed amendments to Chapter 3490 (relating to protective services). The proposed regulations were published in the Pennsylvania Bulletin on June 2, 2001, Vol. 31 at pp. 2799 et seq..

The Employment Unit of Community Legal Services, Inc. ("CLS") has received many requests for representation from workers who have lost their jobs or have been unable to obtain employment in education or child care because of indicated reports of child abuse. While the statutory goal of protecting vulnerable children is of course commendable, the consequences of indicated reports to workers can be extreme. Many of the indicated reports are based on faulty or incomplete investigations, or on actions or omissions by our clients that simply do not meet the statutory definitions of child abuse. Moreover, unless or until an individual named as a perpetrator appeals the indicated report of child abuse, there is no impartial forum or adjudicatory proceeding in which our clients can be said to have had an opportunity to present evidence or an explanation, and protect their rights. The indicated reports that can have such dire consequences for our clients' livelihoods are the result of a county agency's investigation -- because the foremost goal of the county agency is the protection of children, this tends to have the effect of skewing the outcome towards finding "indicated" reports of child abuse, even when there is doubt as to what may have occurred or who may have been responsible. As a result, many of our clients are unable to obtain employment because of unfair or inaccurate reports of child abuse. In our experience, schools and child care facilities will not employ individuals with indicated reports; indeed, it is the practice of DPW to deny licenses to child care facilities who employ individuals with indicated reports.

Because the stakes are so high for workers and their opportunities to defend themselves against child abuse are so narrow, we urge both the Department of Public Welfare and the Independent Regulatory Review Commission to carefully consider the due process interests of the alleged perpetrators when reviewing the proposed regulations. In encouraging more complete reporting of child abuse under the CPSL and thereby protecting children from further abuse, there should be no rush to judgement as to whether or not abuse has occurred. The proposed regulations must and should provide for the protection of the rights of those who have been alleged to have committed abuse or neglect. It must not be forgotten that within the "Findings and Purpose of Chapter," 23 Pa.CSA § 6302(c), the CPSL unequivocally states: "[t]his chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children."

Our comments below about the proposed regulations seek to protect employee interests by: (1) urging an appropriately narrow definition of "imminent risk" ; (2) seeking to ensure that records are properly expunged; (3) requesting appropriate definitions and limitations for the

release or distribution of unfounded, indicated, and founded reports; and (4) ensuring that subjects of indicated reports get proper notification.

The Definition of "Imminent Risk" Should Be Construed Narrowly To Conform with the Intent of the CPSL

Because of the consequences of indicated reports to those workers who have made a career, or intend to make a career, in the fields of child care and education, regulations concerning the scope of the Act are critically important. In our experience, contrary to what DPW states in its section entitled "Requirements," reports of child abuse are *over*-, rather than *under*-indicated, often resulting in unfair–even calamitous–employment consequences for our clients. The proposed expansion of the "Imminent Risk" definition will likely result in reports being indicated unnecessarily and will leave many people without any effective means of preserving their rights or clearing their names.

DPW seeks to define "imminent risk" as "[t]he exposure of a child to the substantial probability of serious physical injury or sexual abuse, which but for happenstance, intervention of a third party, or actions by the child does not occur." By means of this amendment, DPW seeks to overcome a decision by the Commonwealth Court of Pennsylvania that placed the burden of proving, by substantial evidence, that serious injury would have occurred. See E.D. v. DPW, 719 A.2d 384 (1998).

DPW's lower standard is problematic for a few reasons. First, DPW seeks to remove from the Department any burden of proving with evidence that the child was at risk for injury. Instead, the determination of whether the risk was "imminent" becomes a wholly subjective one and DPW is given almost unfettered discretion in indicating reports even where no injury actually occurs. Given the limited nonjudicial opportunities that subjects of child abuse reports have for defending against the charges made against them–and the devastating consequences that such charges can have for their livelihoods and their reputations–such a subjective and speculative standard violates due process and basic fairness. We strongly urge DPW and IRRC to adhere to the original proposed guidelines for "imminent risk" and the standard enunciated in E.D. v. DPW.

Second, the phrase "happenstance, intervention of a third party, or actions by the child" is extremely vague and provides little guidance for someone trying to determine whether injury "would have occurred." "Happenstance" is undefined, but in its common usage it is a vague and all too broad term which is not helpful in providing guidance to child protection workers and hearing officers. Indeed, every child in every home is at some time or other placed in a situation in which fate alone–"happenstance"–prevents an injury from occurring. For example, as we have seen in our practice, even the most careful and loving parents bring their children into the kitchen with them where a hot stove might cause a burn, avert their eyes momentarily while their children are in walkers, or leave their children with babysitters who, although normally responsible, show a lapse in judgment. Under all of these scenarios, with the proposed definition of "imminent risk," parents could be listed on the Central Registry for child abuse even if no injury occurs.

Furthermore, under this language any administration of *lawful* corporal punishment would fall under the definition of "imminent risk," since "happenstance" or "actions by [a] child" are at times the determinative factor in whether or not a serious injury ultimately occurs. This is true even if the child runs away and is never actually hit. This result surely goes well beyond the legislature's intent in enacting the Child Protective Services Law.

The Proposed Regulations do not Adequately Define "Law Enforcement Officials" or Address the Circumstances under which they may have Access to Child Abuse Reports

- **The regulations should define "law enforcement official" narrowly.**

The proposed regulations include or add "law enforcement officials" to persons or entities that will have access to certain records or get notification of certain occurrences. See §§3490.34(f), 3490.105(a)(b)(1), 3490.106a(f), 3490.191(b)(1). However, the term "law enforcement official" is never defined and we have some concern that it will be read too broadly and may enable too wide a range of individuals to get access to this highly sensitive material. We urge DPW to preserve the confidentiality of all the subjects of child abuse reports by defining "law enforcement officials" to include only the local police authorities who are actively involved in investigation of the cases listed in 23 Pa.C.S. §6340.

- **The proposed regulations should limit all references to "law enforcement officials" to those circumstances listed in 23 Pa.C.S. §6340.**

The CPSL describes and limits the circumstances under which law enforcement officials shall be permitted to have access to information and proceedings. See 23 Pa.C.S. §6340(a)(9)(i-iv) and (a)(10)(i-iii). In order to preserve the confidentiality of child abuse reports and to conform to the intent of the CPSL, the regulations must state clearly that all release of information and notification of occurrences to law enforcement officials may only be made pursuant to the limitations of §6340.

The Regulations Should Limit the Information maintained in a Subfile pursuant to 23 Pa.C.S. §6338(c) and Restrict its Dissemination

- **Some provisions must be included in the final regulations to ensure that the subfile of expunged reports not be disseminated or included on child abuse clearances**

23 Pa.C.S. §6338 mandates that indicated and founded child abuse reports will be automatically expunged when the subject child attains 23 years of age. §6338(b). However, §6338(c) directs the Department to maintain indefinitely a subfile of the names of perpetrators of child abuse. The CPSL does not indicate that there are any circumstances under which the information in the subfile may be released. Despite this lack of statutory authority, DPW's practice is to include information from the subfile on child abuse clearances, even information

from expunged files. This practice is clearly incompatible with the stated statutory intent to expunge all files of subject children over the age of 23, thereby eviscerating the protections and guarantees of expunction. This practice is also incompatible with the intent of the CPSL to clearly delineate the circumstances under which information in indicated and founded reports may be released and to impose criminal penalties on individuals who release information without statutory authority. See 23 Pa.C.S. §§ 6339, 6340, and 6349. The final regulations should contain provisions prohibiting the release of any information in the subfile of expunged reports.

- **The final regulations should limit the information contained in the subfile pursuant to §6338(c).**

23 Pa.C.S. §6338(c) explicitly limits the identifying information that can be kept in the subfile to the perpetrator's name. The subfile, it states, "shall not include identifying information regarding other subjects of the report." In spite of this restriction, the current regulations require DPW to maintain information on the subject child's birthday, sex, relationship to perpetrator, and the results of criminal prosecution, along with other data. This data is "identifying data" that the CPSL specifically prohibits and the regulations should be amended to preclude it from the subfiles.

The Final Regulations should require ChildLine to notify Subjects of Indicated and Founded Reports by Certified Mail.

The current regulations direct ChildLine to use first class mail to notify subjects that indicated or founded reports have been entered against them into the statewide Central Register. §§3490.40 and 3490.40a. This method of notification has proven problematic. We have been contacted by many individuals who never received their notification from ChildLine, thereby causing them to miss the short deadline to appeal the determination against them. Given the extreme and dire consequences of missing one's only chance to appeal the serious charge of child abuse, due process and basic fairness dictate that notifications of indicated and founded reports be sent via certified mail. Creating a record that these notifications were sent and received is a fairly inexpensive and practical means through which DPW can prove that an appeal is untimely – thereby avoiding costly battles over timeliness – but also will ensure that the recipients receive this important mail in a timely manner.

ORIGINAL: 2201

COMMUNITY LEGAL SERVICES, INC.

1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700
Web Address: www.clsphila.org

2001 JUL -2 AM 11:45
REVIEW COMMISSION

FAX TRANSMITTAL COVER SHEET

FAX NUMBER: 215.981.0434

DATE: June 2 2001

TO: Robert Nyce, Executive Director

FAX NUMBER: (717) 783-2664

ORGANIZATION: IRRC

FROM: Janet Binzberg

DIRECT DIAL: (215) 981-3745

TOTAL NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 6

MESSAGE: Comments on the proposed amendments to Chapter 3490, Reference # 2201

TO BE COMPLETED AFTER FAX HAS BEEN TRANSMITTED:

DATE OF TRANSMISSION: 7/2/01 **TIME:** 11:20

OPERATOR: JT

(4)
#14-469

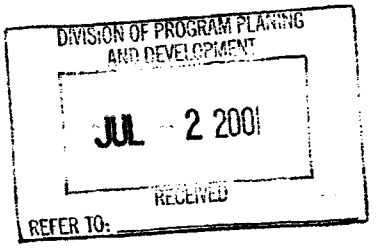
ORIGINAL: 2201

JACKMAN AND DIXON
ATTORNEYS AT LAW
8 EAST COURT STREET
DOYLESTOWN, PENNSYLVANIA 18901

DIANA M. DIXON
BRAD M. JACKMAN

(215) 348-1500
(FAX) 348-9879

June 27, 2001



Department of Public Welfare
c/o Ms. Cathy Utz
P.O. Box 2675
Harrisburg, PA 17105-2675
BY FAX TO 717-705-0364 and First Class Mail

Re: *Proposed Amendments to Pennsylvania Code*

Dear Ms. Utz:

I am the Solicitor to the Bucks County Children and Youth Social Services Agency and have been for 15 years. I am actively involved in the quarterly meetings of the Children and Youth Solicitors from across the state and have planned continuing legal education for child welfare lawyers in Pennsylvania for the past seven years.

I write with respect to the Proposed Amendments to the Pennsylvania Code, published in the Pennsylvania Bulletin on June 2, 2001. My specific comments are with regard to Section 3490.106a (f).

The time limits specified in Section 275.4(b) and (e)(1), (3) and (5) of the Code referenced in the aforementioned Section are entirely too short in matters where an individual is seeking Expunction of Indicated reports of Child Abuse, made pursuant to the Pennsylvania Child Protective Services Law. The manner in which the Bureau of Hearings and Appeals deems necessary to handle these matters is the most difficult procedural posture that I have encountered in my 22 years as an attorney. The impact on preparing for the Appeal Hearing, the impact on submitting required information, and the impact on scheduling and attendance are is punitively adverse..

It is my opinion and the consensus of every other attorney with whom I have discussed this issue including those in attendance at our most recent meeting in Hershey, on June 21, 2001, that the Regulations must be changed to make the Expunction Hearing process practical.

I would be more than willing to offer specific comments as to appropriate time periods when final-form Regulations are considered.

Very truly yours,

Brad M. Jackman

C: Children and Youth Solicitors
BMJ:ccs

ORIGINAL: 2201

2001 JUL -2 P1 3:36

REVIEW COMMISSION

(2)

14-469

Cumberland County Children & Youth Services

Protecting Children
Preserving Families

Agency Administrator
Gary I. Shuey, LSW

County Commissioners
Nancy A. Beach
Earl R. Keller
Richard L. Rovegno

Suite 200
Human Services Building
16 West High Street
Carlisle, PA 17013-2961
(717) 240-6120
(717) 697-0371, Ext. 6120
(717) 532-7286, Ext. 6120

June 28, 2001

Department of Public Welfare
/o Ms. Cathy Utz
P. O. Box 2675
Harrisburg, Pa. 17105

Re: Proposed Amendments of 55 Pa. Code 3490

By Faximile to 717-705-0364 and first class mail

Dear Ms. Utz:

I am the Cumberland County Children and Youth Services Solicitor and have been since 1978. I am actively involved in the quarterly meetings of the Children and Youth Solicitors from across the state and have participated in conducting continuing legal education for child welfare lawyers in Pennsylvania for several years.

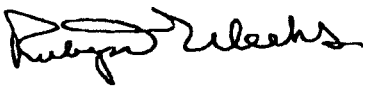
I understand that there may possibly be additional revisions to 55 Pa. Code 3490 which was recently advertised in the Pennsylvania Bulletin, Vo. 31, No. 22, June 22, 2001. I am particularly concerned with Section 3490.106a (f) which references time limits for hearings set forth in 55 Pa. Code 275.4 (b) and (e) (1), (3), and (5). Section 275.4 of the Code was originally written with regard to hearings dealing with the denial of public assistance funding and services to recipients. I can certainly understand the need for quick action in those circumstances. However, the time frames set forth are entirely inappropriate where expunction of an indicated child abuse finding is being sought.

I and other solicitors across the state were horrified upon receipt of the Bureau of Hearing and Appeals Standing Practice Order, Formal Appeals, Order No SPO-Rev-01-HBG which I received February 15, 2001, along with a memorandum, to learn of new time limits prior to expunction hearings. It is my understanding that the Bureau of Hearings and Appeals feels the Standing Practice Order is mandated by the requirements of 55 Pa. Code 275.4. It is only the Department's regulation at 55 Pa. Code 3490.106 (e) which ties 275.4 to the expungement appeal process. I do not feel this linkage is appropropriate given the expungement process. Even the Bureau of Hearings and Appeals cannot

comply with those time limits, since I have often waited two and a half years for a final decision after a hearing. Now, continuances are not granted, even when both parties request them, although they are provided for in 275.4. It is extremely difficult to schedule hearings and arrange for witnesses under the present system. Most solicitors are only part-time with their agencies and generally also handle the dependency, termination, and other proceedings as well as the expunction hearings. The present requirements for preparation, submitting required information, scheduling, and attendance at hearings are extremely onerous. I would request that these matters be reconsidered in the process of adopting new regulations.

I would be happy to offer specific comments or suggestions prior to any adoption of these regulations. Please contact me if I can be of assistance.

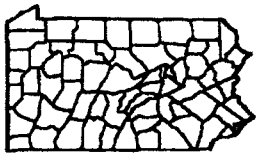
Sincerely,



rdw/c

Ruby D.Weeks, Esq.
Solicitor, Cumberland
County Children and
Youth

Pennsylvania Children and Youth Administrators, Inc.



ORIGINAL: 2201
17 North Front Street • Harrisburg, PA 17101-1624
(717) 232-7554 • Fax (717) 232-2162

(1) #14-469

2001 JUL -2 P1 3:35

REVIEW COMMISSION

Ms. Cathy Utz
Office of Children, Youth and Families
Pa. Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Re: Proposed CPS Regulations
June 28, 2001

Dear Ms. Utz,

In response to the Proposed CPS Regulations, as published in the Pennsylvania Bulletin (vol. 31, no. 22, June 2, 2001), while generally supportive of the changes brought about under Act 127 of 1998, we do have the following comments and concerns:

1. sec. 3490.4: we need clarification and more training (for staff and the community) on the expanded definition of "imminent risk"; this would appear to open the door to even include a parent not having their child use a car seat belt, child injuries as a result of adult DUI, etc..
2. sec. 3940.60: the language implies that a MDT must review all substantiated cases and to be intimately involved in the family service planning- considerable expansions of responsibility and effort; what about the review of cases with repeated reports, unfounded or not?; we do appreciate the emphasis on the community responsibility.
3. sec. 3490.106: we and our solicitors strongly oppose changing the Pa. Code to shorten the time limits for filing appeals and for the scheduling of hearings with the Bureau of Hearings and Appeals;
4. Fiscal Impact: we believe that neither the apparent broadening of "imminent risk" nor the expansion of the duties of the MDT were factored into the calculations of fiscal impact for either the public or private sector and, therefore, would represent an unfounded mandate to counties.

If we can be of any assistance in further discussing our concerns, please don't hesitate to contact me at 717-232-7554.

Sincerely,

Charles R. Songer Jr.
Executive Director

(10)
#14-469

ORIGINAL: 2201

Jeffery L. Felton
DIRECTOR
Karen Blockinger
DEPUTY DIRECTOR

Telephone: (724) 228-6884
Fax: (724) 223-4713

WASHINGTON COUNTY

CHILDREN AND YOUTH SOCIAL SERVICE AGENCY

100 WEST BEAU STREET - SUITE 502
WASHINGTON, PENNSYLVANIA 15301

June 29, 2001

Department of Public Welfare
c/o Ms. Cathy Utz
P.O. Box 2675
Harrisburg, PA 17105-2675
By Fax to 717-705-0364 and First Class Mail

Re: Proposed Amendments to Pennsylvania Code

Dear Ms. Utz:

I am the Solicitor for the Washington County Children and Youth Social Service Agency and have been for over three years. I am actively involved in the quarterly meetings of the statewide Solicitor's group of the Pennsylvania Children and Youth Administrators (PCYA) and the Children's Rights Committee of the Pennsylvania Bar Association.

I write to voice an objection to the proposed Amendments to the Pennsylvania Code, as published in the Pennsylvania Bulletin, dated June 2, 2001 with respect to Sections 3490.106a (f) and 3490.192 (f).

As you may be aware, the Pennsylvania Department of Public Welfare, Bureau of Hearings and Appeals recently amended its Standing Practice Order to unreasonably condense the time periods in which the appeals are processed. Ostensibly the changes to what has been described as "warp speed" were made to insure that child abuse expunction appeals are disposed of more promptly. However, to correct deficits at the one end with regard to final adjudication of the appeals, the changes were all made at the front end as to how quickly the appeal hearings would be scheduled and when necessary documentation must be submitted. For county children and youth agencies, who have the burden of proof in such appeals, the timeframes were cut in half. Under the recent changes, the hearings are currently scheduled some 15 days after a pre-hearing conference and necessary documents are due within five days after such conference. The timeframes are unreasonable and are contrary to the intent of the Child Protective Services Law.

While it is true that parties still wait at times for years for a decision after an appeal hearing has been completed, changing the system to require county agencies to prepare for such important hearings in such a short time will not correct this problem. The problem has never been getting the child abuse appeals to a hearing and in fact the process was working reasonably well until the impromptu changes by the Bureau. The problems with the Bureau are multi-fold and the proposed amendments do not serve to address or correct those problems. The solicitors have attempted over the last several years to have someone from the Bureau attend a quarterly meeting to discuss procedural problems with the Bureau. The Bureau has consistently turned a deaf ear and as of June 21, 2001 was still working on an official response as to whether or not a representative would attend a June 21, 2001 meeting of the statewide solicitor's group. In addition, the solicitors have written to the Secretary with regard to the multiple problems experienced with the Bureau and each have received in return a courteous, but non-responsive response letter from another individual.

In context, the proposed amendments purport to give with one hand and take away with the other. While counties may not be able to sustain meritorious indicated child abuse reports due to the unreasonable time frames and other problems with the Bureau, county agencies will now be able to maintain unfounded reports for up to one year. This distinction makes no sense. In cases where substantial evidence exists, the indicated reports are more likely to be dismissed because of unreasonable constraints of time and other equally serious problems with the Bureau. But in cases where substantial evidence does not exist, the unfounded reports will be maintained. How does any of this serve to protect the children of this Commonwealth? I respectfully urge the Department of Public Welfare to comprehensively review the problems at the Bureau and to establish a system which is equitable for all parties and serves the legislative purpose of the Child Protective Services Law to insure the safety and protection of our children.

I remain available to further discuss these matters with you and to assist in any way, as requested, when final-formal regulations are considered.

Respectfully yours,

Joyce A. Hatfield-Wise, Esquire
Agency Attorney

JAHW/km

(6)
#14-469

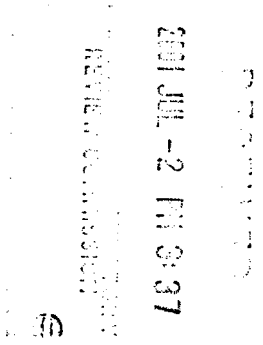
ORIGINAL: 2201

GOLD AND VILIM
ATTORNEYS AT LAW
1608 WALNUT STREET
SUITE 1600
PHILADELPHIA, PENNSYLVANIA 19103
(215) 546-5464
FACSIMILE (215) 546-5268

RICHARD J. GOLD
GUY VILIM
M. ROBIN MADDOX

EMAIL rgold@goldvilim.com
gvilim@goldvilim.com
rmaddox@goldvilim.com

June 29, 2001



Cathy Utz
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

SENT VIA FACSIMILE (717) 705-0364

RE: Comments to Proposed Rulemaking

Dear Ms. Utz:

Our office represents The Glen Mills Schools, a private residential rehabilitation institution in Pennsylvania. Glen Mills provides residential and rehabilitative services to male juveniles adjudicated delinquent and placed in its facility pursuant to court orders from Juvenile Judges throughout the entire country. On behalf of Glen Mills we are submitting the following comments to the proposed amendments to the current Child Protective Services Regulations found at Title 55 Public Welfare, Part V., Children, Youth and Families Manual, Subchapter 3490 Protective Services.

3490.34(f): This proposed amendment will permit Law Enforcement officials to obtain reports which are determined to be unfounded awaiting expunction. We recognize this right is already afforded under the Child Protective Services Law. With this right should come responsibility. When Law Enforcement are provided these reports they must be required, as is the Department, to destroy these unfounded reports no later than one year and 120 days after the report is received by Childline. Law enforcement must not be allowed to maintain these unfounded reports in their records longer than the Department is allowed to maintain the reports. In addition, the subject who was named as the alleged perpetrator in the unfounded report is entitled to receive notification that the unfounded report is being sent to Law Enforcement. As is stated in the CPSL the release of an unfounded report to Law Enforcement is only allowed if the unfounded report is relevant to a criminal investigation. It is clear that the CPSL intended that the release of these records, even to Law Enforcement, is not to be taken lightly. Therefore, the Regulations should reiterate that the release is only to be made if it is established that the specific

reports are relevant to a current criminal investigation.

3490.60(c): Investigative Teams: This regulation is proposed in order to ensure the regulations are consistent with provisions in the CPSL. It is suggested that the Department require that the protocols in the various counties be consistent to ensure that all subjects of child abuse reports are treated fairly and equally. While it is commendable to attempt to minimize the trauma to children by combining Law Enforcement and Department interviews it is not acceptable to use the CPSL to circumvent the rights of subjects who become part of a criminal investigation. If each county is developing its own protocol for the coordination of child abuse investigations then there is little to no assurance that the teams in each county will treat the subjects of an investigation the same. For instance, one county may take the position that Law Enforcement is acting as Department agents during interviews with the subjects and another county may take the position that Law Enforcement is conducting its own investigation for its own purpose and is simply accompanying the Department. In addition, it should be mandatory that during investigations that are conducted jointly by Law Enforcement and the Department, Law Enforcement and the Department both identify their role in the investigation. It is fundamentally unfair for Law Enforcement to conduct joint investigations and interviews with the Department unless both agencies identify their individual roles and make clear that the Department and Law Enforcement do not have the same roles. The Department's primary role is to ensure the safety of children. Law Enforcement's primary role is to assess the appropriateness of bringing criminal charges.

The Department has an opportunity, with these proposed amendments, to address what continues to be a very disturbing problem, false child abuse reports. The county agency and the district attorney can develop as part of the protocol for Investigative Teams a procedure for handling false child abuse reports, including a protocol for making referral to Law Enforcement.

Thank you for your consideration of these comments.

Very truly yours,

M. Robin Maddox

cc: Donald McNeal

PENNSYLVANIA COUNCIL
OF CHILDREN, YOUTH AND FAMILY SERVICES

2040 LINGLESTOWN ROAD, SUITE 109
HARRISBURG, PENNSYLVANIA 17110
(717) 651-1725
FAX (717) 651-1729

Original: 2201

June 29, 2001

Cathy Utz
Office of Children, Youth and Families
PA Department of Public Welfare
P.O. Box 2675
Harrisburg PA 17105-2675

Re: Proposed Rule: Amendments to 55 PA Code Chapter 3490
Child Protective Services Regulations

Dear Ms. Utz:

As always, we are pleased to have the opportunity to offer comments and reactions to proposed rulemaking. The Pennsylvania Council of Children, Youth and Family Services represents a significant number of private agencies from across the Commonwealth. Council members serve non-adjudicated, dependent and delinquent populations, including the families of these children and youth, and provide a broad range of residential, therapeutic and supportive services. Services range from prevention focused, in home services to foster and campus based residential and residential treatment services. Many members also have strong behavioral health and educational components incorporated into their array of services and supports.

We have reviewed the proposed changes to the Child Protective Services Regulations carefully and have solicited input from our membership. We are pleased to offer our support for these regulatory changes and encourage their adoption and implementation.

We have long identified the value of the multidisciplinary team process as a mechanism for promoting community ownership, investment and input regarding services for children and youth. While the minimal expectation of "at least an annual meeting" somewhat dilutes the potential impact and significance of this process, the need to allow for individual county determination of frequency and role is appreciated.

We look forward to future opportunities to offer input into regulatory development.

Very truly yours,

Bernadette M. Bianchi, LSW
Executive Director

CC: Independent Regulatory Review Commission

(11)
#14-469

ORIGINAL: 2201

CITY OF PHILADELPHIA

LAW DEPARTMENT
One Parkway
1515 Arch Street
Philadelphia, PA 19102-1595

RICK L. AMES
DEPUTY CITY SOLICITOR
683-5132

July 02, 2001

Department of Public Welfare
C/o Ms. Cathy Utz
P.O. Box 2675
Harrisburg, PA. 17105-2675

Re: Proposed Amendments to Pennsylvania Code

Dear Ms Utz:

I am a Deputy City Solicitor in Philadelphia. My client is the Philadelphia Department of Human Services, including the Children and Youth Division. I supervise much of the work the attorneys in the Unit do in regard to child abuse expunction appeals at the Bureau of Hearings and Appeals in Philadelphia. As Mr. Jackman, from the Bucks County Solicitor's Office has done, I am writing with respect to the Proposed Amendments to the Pennsylvania Code, specifically Section 3490.106a(f), as carried out by Section 275.4(b) and (e).

As proposed, these changes in the law may make it close to impossible to adequately litigate cases in Philadelphia. Because of the number of cases scheduled in this County, it has been my experience that the time between the pre-hearing telephone conference call and the trial date itself is two to three months. Adding in the time needed to locate witnesses and documents, possibly schedule expert witnesses, schedule additional days of testimony in longer hearings, prepare the transcribed notes of testimony, write briefs, and have a written decision, it is clear that a mandated 90 day time period is unrealistic for child abuse expunction hearings in Philadelphia.

If you would like further information from this office, please feel free to contact me.

Sincerely,

Rick L. Ames
Deputy City Solicitor

(13)

#14-469

ORIGINAL: 2201

CITY OF PHILADELPHIA

LAW DEPARTMENT
One Parkway
1515 Arch Street
Philadelphia, PA 19102-1595

Kenneth I. Trujillo
City Solicitor

(215) 683-5171(t)
(215) 683-5175(f)

July 2, 2001

Department of Public Welfare
c/o Cathy Utz
P.O. Box 2675
Harrisburg, PA 17105-2675

Re: Proposed Amendments to Pennsylvania Code

Ms. Utz:

I am Chair of Administrative Law at the City of Philadelphia Law Department. My client is the Philadelphia Department of Human Services. I am writing to request the Department of Public Welfare to provide its rationale for a proposed amendment to Section 3490.34. I am also seeking clarification of a proposed amendment to Section 3490.58 of the Public Welfare Code.

The proposed amendment to Section 3490.34 appears at page 11 of the Pa. Bulletin, Doc. No. 01-941. It states as follows:

> Reports determined unfounded through the appeal process will be expunged immediately after the expiration of the appeal period for the next level of appeal.

Section c. of the "Requirements" Section of the Pennsylvania Bulletin suggests that this section of the Code "proposes to adopt the statutory requirement of Section 6337 of the CPSL". Section 6337 of the CPSL does not address, however, the timeframe for expunging reports determined to be unfounded through an appeal. While we have some theories why the Department proposed this amendment, we would appreciate it if the Department would explain its rationale for proposing the immediate expunction of the record under this particular circumstance.

The proposed amendment to Section 3490.58(d)(2) is self-explanatory. We understand that this amendment extends the time that a complaint is held in the file by one year. Section d. of the Requirements section, however, appears to limit the scope of this section to reports that are determined to be unfounded as a result of an appeal. We would appreciate it if you would clarify this apparent discrepancy.

Thank you for your attention to this matter.

Very truly yours,

Stella M. Tsai
Chair, Administrative Law

(7)
14-469

COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA
17 N. FRONT ST. · HARRISBURG, PA 17101-1624 · 717-232-7554 · 717-232-2162 FAX · www.pacounties.org

July 2, 2001

ORIGINAL: 2201

Ms. Cathy Utz
Office of Children, Youth and Families
Pennsylvania Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Ms. Utz:

I am writing on behalf of the County Commissioners Association of Pennsylvania, in response to the proposed Child Protective Services regulations, as published in the Pennsylvania Bulletin (vol. 31, no. 22, June 2, 2001). While generally supportive of the changes brought about under Act 127 of 1998, we do have the following comments and concerns:

1. We would appreciate more clarification and more training (for staff and the community) on the expanded definition of "imminent risk" (section 3490.4). This would appear to open the door to even include a parent not having their child use a car seat belt, child injuries as a result of adult DUI, etc.
2. The language in section 3940.60 implies that a MDT must review all substantiated cases and be intimately involved in the family service planning, which constitute considerable expansions of responsibility and effort. Although we appreciate the emphasis on the community responsibility, the review of cases with repeated reports would cause a strain on county resources.
3. We and our solicitors strongly oppose changing the Pennsylvania Code to shorten the time limits for filing appeals and for the scheduling of hearings with the Bureau of Hearings and Appeals (section 3490.106).
4. Finally, we believe that neither the apparent broadening of "imminent risk" nor the expansion of the duties of the MDT were factored into the calculations of fiscal impact for either the public or private sector and, therefore, would constitute an unfounded mandate to counties.

Thank you for your consideration of these comments. Please feel free to contact me with any questions at the number listed above.

Sincerely,

Rachel Hofstetter

Rachel Hofstetter
Government Relations Specialist

(12)
#14-44A

ORIGINAL: 2201

COUNTY OF MONTGOMERY
COMMISSIONERS
MICHAEL D. MARINO, ESQ.
CHAIRMAN
JAMES R. MATTHEWS RUTH S. DAMSKER

EXECUTIVE DIRECTOR
WALTER J. JUNEWICZ, A.C.S.W.
TEL: (610) 278-5882
TDD: (610) 631-1211

OFFICE OF CHILDREN & YOUTH
MONTGOMERY COUNTY HUMAN SERVICES CENTER
1430 DeKALB STREET
P.O. BOX 311
NORRISTOWN, PENNSYLVANIA 19404-0311
TELE: 610-278-5800 FAX: 610-278-5898

July 2, 2001

Department of Public Welfare
C/o Ms. Cathy Utz
P.O.Box 2675
Harrisburg, PA 17105-2675

SENT VIA FAX AND
FIRST CLASS MAIL

RE: Proposed Amendments to Pennsylvania Code

Dear Ms. Utz:

I am the Solicitor to the Montgomery County Office of Children and Youth. I have been active in child welfare law for the past six years.

I write with respect to the Proposed Amendments to the Pennsylvania Code, published in the Pennsylvania Bulletin on June 2, 2001. My specific comments are with regard to Section 3490.106a(f).

The time limits specified in Section 275.4(b) and (e)(1), (3) and (5) of the Code referenced above are entirely too short in matters where an individual is seeking Expunction of Indicated reports of Child Abuse, made pursuant to the Pennsylvania Child Protective Services Law. The manner in which the Bureau of Hearings and Appeals deems necessary to handle these matters is the most difficult procedural posture that I have encountered in my twenty years as an attorney, both here and in North Carolina, where I practiced prior to joining the Pennsylvania Bar in 1987. The impact on preparing for the Appeal Hearing, the impact on submitting required information, and the impact on scheduling and attendance are punitive. Accordingly, I object to the promulgation of the proposed Regulation.

It is my opinion and the consensus of every other attorney with whom I have discussed this issue that the Regulations must be changed to make the Expunction Hearing process practical in order to assure a just conclusion to each case.

I would be willing to offer specific comments and/or suggestions of appropriate time periods once final form Regulations are considered.

Very truly yours,

Gail F. Miller

Cc: Children and Youth Solicitors
Mr. Walter J. Junewicz

(14)

14-469

ORIGINAL: 2201

Cumberland County Children & Youth Services

July 3,2001

Department of Public Welfare
c/o Ms. Cathy Utz
P.O. Box 2675
Harrisburg, PA 17105-2675

2001 JUL -5 PM 3:22

RE: Proposed 55 Pa. Code 3490 Amendments

VIA FAX to 717-705-0364 and First Class Mail

Dear Ms. Utz:

I am one of the solicitors for Cumberland County Children and Youth Services and have attended the solicitor's quarterly meetings.

As was advertised in the Pennsylvania Bulletin, Vol. 31, No. 22, June 2, 2001, there may be additional revisions to 55 Pa. Code 3490, generally, and possibly specifically Section 3490. 106a(f). This section refers to time limits for hearings pursuant to 55 PA. Code 275.4 (b) and (e)(1), (3) and (5). This section was created to address hearings necessitated by the denial of public assistance funding and services.

For child abuse expunction hearings the time constraints in place currently, as a result of Bureaus of Hearings and Appeals, Order No. SPO-Rev-01-HBG, are well beyond the scope of Section 275.4. These constraints are also overly burdensome. For example, in no other area of practice must one provide a complete discovery packet filed, not postmarked, in five days. Neither is it realistic to schedule a hearing date within 30 days following the prehearing conference. The Bureau of Hearings and Appeals has already experienced the 30-day scheduling problem.

Another concern is the time frame for the issuance of the requested subpoenas. In order to serve witnesses sufficiently in advance of the hearing to allow their schedules to accommodate being absent from work to provide testimony,

Protecting Children. Preserving Families.

Suite 200
Human Services Building
16 West High Street
Carlisle, PA 17013-2961
(717) 240-6120
(717) 697-0371, Ext. 6120
(717) 532-7286, Ext. 6120

the parties need the subpoenas returned a minimum of 30 days prior to the scheduled hearing. At this time, the Standing Practice Order specifies no time at all.

In moving forward to amending existing or adopting new regulations, I would respectfully request that others whom are closely involved with the system have an opportunity to have comment. We all seek a procedure that is streamlined and workable.

Very truly yours,

Lindsay Dare Baird, Esquire

LDB/jam

(15)

#14-469

ORIGINAL: 2201

Westmoreland County Children's Bureau

July 10, 2001

Ms. Cathy Utz
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Re: Proposed Protective Service Regulations

Dear Ms. Utz,

I am concerned about the possible fiscal impact to public agencies due to the change in definition of Imminent Risk in the proposed regulations.

It is suggested that the change in definition of imminent risk will increase opportunities to protect children when there is a high risk of abuse. This implies that there will be an increase in investigations, a possible increase in numbers of indicated cases, and an increase in cases opened for ongoing services. Should that happen, there would need to be a corresponding increase in casework, supervisory, and support staff in the agency. This would certainly have a significant fiscal impact.

It is possible that this type of case currently receives services from the agency although it is not identified as imminent risk. At this point in time, it is not possible to determine if that is the case. If so, then the need for additional agency staff would not be as critical and the fiscal impact would be decreased.

Nevertheless, it appears to me that there could be a fiscal impact that has not been identified.

Sincerely,

Marilyn McSparrin
Co. Casework Manager

2 N MAIN STREET STE 303 GREENSBURG PA 15601-2405 (724) 830-3300
301 ELEVENTH STREET STE D NEW KENSINGTON PA 15068-6179 (724) 337-5560

CPS Regs- draft language 071901

Imminent Risk 3490.4:

Original Language:

Substantial evidence that a child would be a victim of serious physical injury, sexual abuse or exploitation except for happenstance, intervention of a third party or actions by the alleged victim.

Proposed Regulations:

The exposure of a child to the substantial probability of serious physical injury or sexual abuse or exploitation which but for happenstance, intervention of a third party, or actions by the child does not occur.

Recommended Language:

The exposure of a child to the substantial probability of child abuse or neglect, as defined by law, which but for happenstance, intervention of a third party, or actions by said child does not occur. This not intended to cover probability of injury as a result of negligent actions on the part of a parent/caretaker where that action is covered by other law (e.g. child seat belts).

MDT Responsibilities 3490.60(b):

Proposed Regulations:

(1) To review founded and indicated cases of child abuse, including responses by the county agency and other agencies providing services to the child.

(2) To assist in the development of a family service plan, when appropriate.

Recommended Language:

(1) To review cases of child abuse that show a history or pattern of abuse, relative to the victim or the alleged perpetrator, and any other cases referred to it by the county agency. Included in said review will be the actions of all community resources to the case in question.

(2) When requested by the county agency, to assist in the development of the family service plan for the case in question.

IRRC

From: Chuck Songer [csonger@pacounties.org]
Sent: Monday, July 23, 2001 10:34 AM
To: Mary Lou Harris (E-mail)
Cc: Barbara Robbins
Subject: PCYA Comments on Propsed CPS Regulations

Importance: High

Original: 2201

CPS regs comments 071901.doc

Attached is our suggested language. If we can be of further assistance, please let me know. Thank you for your time and attention.

<<CPS regs comments 071901.doc>>

Chuck

Charles R. Songer, Executive Director
Pa. Children & Youth Administrators Assoc.
17 N. Front St., Harrisburg, PA 17101
ph. 717-232-7554; fax 717-232-2162
csonger@pacounties.org

COMMUNITY LEGAL SERVICES, INC.

ORIGINAL: 2201

1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700, Fax: 215.981.0434
Web Address: www.clsphila.org

June 2, 2001

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Comments to Proposed Regulations on Child Protective Services

IRRC Reference No. 2201

Dear Mr. Nyce:

Enclosed please find the comments of the Employment Unit of Community Legal Services in response to DPW's proposed amendments to Chapter 3490. We appreciate the opportunity to share our comments and concerns with you on these important issues.

If you have any questions, please do not hesitate to call me at (215) 981-3745 or my colleague Suzanne Young at (215) 981-3754.

Respectfully yours,

JANET F. GINZBERG
Staff Attorney

COMMUNITY
LEGAL SERVICES, INC.

ORIGINAL: 2201

1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700, Fax: 215.981.0434
Web Address: www.clsphila.org

June 2, 2001

Ms. Cathy Utz
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Re: Comments to Proposed Regulations on Child Protective Services

Reference No. 14-469

Dear Ms. Utz:

Enclosed please find the comments of the Employment Unit of Community Legal Services in response to the proposed amendments to Chapter 3490. We appreciate the opportunity to share our comments and concerns with you on these important issues.

If you have any questions, please do not hesitate to call me at (215) 981-3745 or my colleague Suzanne Young at (215) 981-3754.

Respectfully yours,

JANET F. GINZBERG
Staff Attorney

cc: Independent Regulatory Review Commission

Comments of Employment Unit of Community Legal Services, Inc.,
On Proposed Regulations About the Child Protective Services Law

The following are comments concerning the proposed amendments to Chapter 3490 (relating to protective services). The proposed regulations were published in the Pennsylvania Bulletin on June 2, 2001, Vol. 31 at pp. 2799 et seq..

The Employment Unit of Community Legal Services, Inc. ("CLS") has received many requests for representation from workers who have lost their jobs or have been unable to obtain employment in education or child care because of indicated reports of child abuse. While the statutory goal of protecting vulnerable children is of course commendable, the consequences of indicated reports to workers can be extreme. Many of the indicated reports are based on faulty or incomplete investigations, or on actions or omissions by our clients that simply do not meet the statutory definitions of child abuse. Moreover, unless or until an individual named as a perpetrator appeals the indicated report of child abuse, there is no impartial forum or adjudicatory proceeding in which our clients can be said to have had an opportunity to present evidence or an explanation, and protect their rights. The indicated reports that can have such dire consequences for our clients' livelihoods are the result of a county agency's investigation -- because the foremost goal of the county agency is the protection of children, this tends to have the effect of skewing the outcome towards finding "indicated" reports of child abuse, even when there is doubt as to what may have occurred or who may have been responsible. As a result, many of our clients are unable to obtain employment because of unfair or inaccurate reports of child abuse. In our experience, schools and child care facilities will not employ individuals with indicated reports; indeed, it is the practice of DPW to deny licenses to child care facilities who employ individuals with indicated reports.

Because the stakes are so high for workers and their opportunities to defend themselves against child abuse are so narrow, we urge both the Department of Public Welfare and the Independent Regulatory Review Commission to carefully consider the due process interests of the alleged perpetrators when reviewing the proposed regulations. In encouraging more complete reporting of child abuse under the CPSL and thereby protecting children from further abuse, there should be no rush to judgement as to whether or not abuse has occurred. The proposed regulations must and should provide for the protection of the rights of those who have been alleged to have committed abuse or neglect. It must not be forgotten that within the "Findings and Purpose of Chapter," 23 Pa.CSA § 6302(c), the CPSL unequivocally states: "[t]his chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children."

Our comments below about the proposed regulations seek to protect employee interests by: (1) urging an appropriately narrow definition of "imminent risk" ; (2) seeking to ensure that records are properly expunged; (3) requesting appropriate definitions and limitations for the

release or distribution of unfounded, indicated, and founded reports; and (4) ensuring that subjects of indicated reports get proper notification.

The Definition of "Imminent Risk" Should Be Construed Narrowly To Conform with the Intent of the CPSL

Because of the consequences of indicated reports to those workers who have made a career, or intend to make a career, in the fields of child care and education, regulations concerning the scope of the Act are critically important. In our experience, contrary to what DPW states in its section entitled "Requirements," reports of child abuse are *over*-, rather than *under*-indicated, often resulting in unfair–even calamitous–employment consequences for our clients. The proposed expansion of the "Imminent Risk" definition will likely result in reports being indicated unnecessarily and will leave many people without any effective means of preserving their rights or clearing their names.

DPW seeks to define "imminent risk" as "[t]he exposure of a child to the substantial probability of serious physical injury or sexual abuse, which but for happenstance, intervention of a third party, or actions by the child does not occur." By means of this amendment, DPW seeks to overcome a decision by the Commonwealth Court of Pennsylvania that placed the burden of proving, by substantial evidence, that serious injury would have occurred. See E.D. v. DPW, 719 A.2d 384 (1998).

DPW's lower standard is problematic for a few reasons. First, DPW seeks to remove from the Department any burden of proving with evidence that the child was at risk for injury. Instead, the determination of whether the risk was "imminent" becomes a wholly subjective one and DPW is given almost unfettered discretion in indicating reports even where no injury actually occurs. Given the limited nonjudicial opportunities that subjects of child abuse reports have for defending against the charges made against them–and the devastating consequences that such charges can have for their livelihoods and their reputations–such a subjective and speculative standard violates due process and basic fairness. We strongly urge DPW and IRRC to adhere to the original proposed guidelines for "imminent risk" and the standard enunciated in E.D. v. DPW.

Second, the phrase "happenstance, intervention of a third party, or actions by the child" is extremely vague and provides little guidance for someone trying to determine whether injury "would have occurred." "Happenstance" is undefined, but in its common usage it is a vague and all too broad term which is not helpful in providing guidance to child protection workers and hearing officers. Indeed, every child in every home is at some time or other placed in a situation in which fate alone–"happenstance"–prevents an injury from occurring. For example, as we have seen in our practice, even the most careful and loving parents bring their children into the kitchen with them where a hot stove might cause a burn, avert their eyes momentarily while their children are in walkers, or leave their children with babysitters who, although normally responsible, show a lapse in judgment. Under all of these scenarios, with the proposed definition of "imminent risk," parents could be listed on the Central Registry for child abuse even if no injury occurs.

Furthermore, under this language any administration of *lawful* corporal punishment would fall under the definition of "imminent risk," since "happenstance" or "actions by [a] child" are at times the determinative factor in whether or not a serious injury ultimately occurs. This is true even if the child runs away and is never actually hit. This result surely goes well beyond the legislature's intent in enacting the Child Protective Services Law.

The Proposed Regulations do not Adequately Define "Law Enforcement Officials" or Address the Circumstances under which they may have Access to Child Abuse Reports

- **The regulations should define "law enforcement official" narrowly.**

The proposed regulations include or add "law enforcement officials" to persons or entities that will have access to certain records or get notification of certain occurrences. See §§3490.34(f), 3490.105(a)(b)(1), 3490.106a(f), 3490.191(b)(1). However, the term "law enforcement official" is never defined and we have some concern that it will be read too broadly and may enable too wide a range of individuals to get access to this highly sensitive material. We urge DPW to preserve the confidentiality of all the subjects of child abuse reports by defining "law enforcement officials" to include only the local police authorities who are actively involved in investigation of the cases listed in 23 Pa.C.S. §6340.

- **The proposed regulations should limit all references to "law enforcement officials" to those circumstances listed in 23 Pa.C.S. §6340.**

The CPSL describes and limits the circumstances under which law enforcement officials shall be permitted to have access to information and proceedings. See 23 Pa.C.S. §6340(a)(9)(i-iv) and (a)(10)(i-iii). In order to preserve the confidentiality of child abuse reports and to conform to the intent of the CPSL, the regulations must state clearly that all release of information and notification of occurrences to law enforcement officials may only be made pursuant to the limitations of §6340.

The Regulations Should Limit the Information maintained in a Subfile pursuant to 23 Pa.C.S. §6338(c) and Restrict its Dissemination

- **Some provisions must be included in the final regulations to ensure that the subfile of expunged reports not be disseminated or included on child abuse clearances**

23 Pa.C.S. §6338 mandates that indicated and founded child abuse reports will be automatically expunged when the subject child attains 23 years of age. §6338(b). However, §6338(c) directs the Department to maintain indefinitely a subfile of the names of perpetrators of child abuse. The CPSL does not indicate that there are any circumstances under which the information in the subfile may be released. Despite this lack of statutory authority, DPW's practice is to include information from the subfile on child abuse clearances, even information

from expunged files. This practice is clearly incompatible with the stated statutory intent to expunge all files of subject children over the age of 23, thereby eviscerating the protections and guarantees of expunction. This practice is also incompatible with the intent of the CPSL to clearly delineate the circumstances under which information in indicated and founded reports may be released and to impose criminal penalties on individuals who release information without statutory authority. See 23 Pa.C.S. §§ 6339, 6340, and 6349. The final regulations should contain provisions prohibiting the release of any information in the subfile of expunged reports.

- **The final regulations should limit the information contained in the subfile pursuant to §6338(c).**

23 Pa.C.S. §6338(c) explicitly limits the identifying information that can be kept in the subfile to the perpetrator's name. The subfile, it states, "shall not include identifying information regarding other subjects of the report." In spite of this restriction, the current regulations require DPW to maintain information on the subject child's birthday, sex, relationship to perpetrator, and the results of criminal prosecution, along with other data. This data is "identifying data" that the CPSL specifically prohibits and the regulations should be amended to preclude it from the subfiles.

The Final Regulations should require ChildLine to notify Subjects of Indicated and Founded Reports by Certified Mail.

The current regulations direct ChildLine to use first class mail to notify subjects that indicated or founded reports have been entered against them into the statewide Central Register. §§3490.40 and 3490.40a. This method of notification has proven problematic. We have been contacted by many individuals who never received their notification from ChildLine, thereby causing them to miss the short deadline to appeal the determination against them. Given the extreme and dire consequences of missing one's only chance to appeal the serious charge of child abuse, due process and basic fairness dictate that notifications of indicated and founded reports be sent via certified mail. Creating a record that these notifications were sent and received is a fairly inexpensive and practical means through which DPW can prove that an appeal is untimely – thereby avoiding costly battles over timeliness – but also will ensure that the recipients receive this important mail in a timely manner.