

Regulatory Analysis Form

<p>(1) Agency</p> <p>Department of Public Welfare</p>	<p>This space for use by IRRC</p>
<p>(2) I.D. Number (Governor's Office Use)</p> <p style="text-align: center; font-size: 1.2em;">14-504</p>	<p>IRRC Number: 2552</p>
<p>(3) Short Title</p> <p>Repeal 7 Pa.B. 3266 Chapter 9003 Licensure/Approval Appeal Procedure</p>	
<p>(4) PA Code Cite 55 Pa.Code Chapters:</p> <p>Chapter 20, Chapter 1181, Chapter 2380, Chapter 2390, Chapter 3130, Chapter 3140, Chapter 3270, Chapter 3280, Chapter 3290, Chapter 3680, Chapter 3700, Chapter 6400, and Chapter 6500.</p>	<p>(5) Agency Contacts & Telephone Numbers</p> <p>Primary Contact: Robert E. Robinson, Director, Human Services Licensing Management and Research. 717-705-0382</p> <p>Secondary Contact: Linnette Bidelspach, Program Specialist, Human Services Licensing Management and Research. 717-705-6954</p>
<p>(6) Type of Rule Making (Check One)</p> <p><input type="checkbox"/> Proposed Rule Making</p> <p><input checked="" type="checkbox"/> Final Order Adopting Regulation</p> <p><input type="checkbox"/> Final Order, Proposed Rule Making Omitted</p>	<p>(7) Is a 120-Day Emergency Certification Attached? (To be used only for emergency-certified regulations.)</p> <p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes: By the Attorney General</p> <p><input type="checkbox"/> Yes: By the Governor</p>
<p>(8) Briefly explain the regulation in clear and non-technical language.</p> <p>The purpose of this final-form rulemaking is to rescind the uncodified regulation at 7 Pa.B.3266 (November 5, 1977) titled Chapter 9003 Licensure/Approval Appeal Procedure and replace it with 1 Pa.Code Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP) for all facilities and agencies certified by the Department.</p>	
<p>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</p> <p>2 Pa.C.S. §§501-508 and §§701-704 and the Public Welfare Code, Act of June 13, 1967, P.L. 31, No. 21,62 P.S. Article IX and Article X, 62 P.S. §§ 901-922 and §§1001-1087.</p>	
<p>(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.</p> <p>This regulation is not mandated by a Federal or state law, court order or regulation.</p>	

INDEPENDENT REGULATORY REVIEW COMMISSION

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(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The final-form rulemaking is needed to update and simplify the certification appeal process in the Department. The uncodified regulation a 7 Pa.B. 3266 is unnecessary and duplicative of the GRAPP. GRAPP is appropriate for certification appeals. The Department has already begun a chapter-by-chapter replacement of the regulation at 7 Pa.B. 3266 with GRAPP at 55 Pa.Code 3800.12 (relating to appeals) and at 55 Pa.Code 2600.12 (relating to appeals).

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

There are no public health, safety, environmental or general welfare risks associated with non-regulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

There are currently unequal and differing appeals procedures within the types of facilities certified by the Department. The GRAPP would provide consistency in the appeal process across all certified human service programs. Currently, attorneys of appellants providing multiple types of human services would have to be versed in both the regulation at 7 Pa.B. 3266 and the GRAPP in order to represent their clients' best interest. The existence of a special certification appeal regulation imposes an unnecessary burden on appellants' counsel because its applicability is strictly limited to some, but not all Departments licensing appeals. The final-form regulation would affect approximately 14, 306 Certificates of Compliance serving a capacity of 513,050 individuals at 19, 411 sites.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

This final-form rulemaking will not adversely affect anyone.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Agencies and facilities receiving certification under Chapter 20 are: Adult Training Facilities certified under Chapter 2380, Vocational Facilities certified under Chapter 2390, County Children and Youth Social Service Programs certified under Chapter 3130 and Chapter 3140, Child Day Care Centers certified under Chapter 3270, Group Child Day Care Homes certified under Chapter 3280, Family Day Care Homes certified under Chapter 3290, Private Children and Youth Social Service Agencies certified under Chapter 3680, Foster Family Care Agencies certified under Chapter 3700, Psychiatric Outpatient Clinics under Chapter 5200, Partial Hospitalization under Chapter 5210, Private Psychiatric Hospitals under Chapter 5300, Community Residential Rehabilitation Services for the Mentally Ill under Chapter 5310, Requirements for Long-Term Structured Residence Licensure under Chapter 5320, Community Homes for Individuals with Mental Retardation certified under Chapter 6400, Family Living Homes certified under Chapter 6500 and Intermediate Care Facilities for the Mentally Retarded under Chapter 6600. This will affect approximately 14,306 Certificates of Compliance.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Approximately 120 letters were mailed to Trade and Advocacy groups and provider organizations. These groups were sent copies of the draft regulation on January 18, 2005, and were asked to respond with comments to the Director of Human Services Licensing Management and Research within 20 days of receipt of the information. Representatives from the Department's Office of Legal Counsel, Human Services Licensing Management and Research and the Office of Mental Retardation met with the provider group's legal representative on March 14, 2005, to discuss their concerns with the proposed regulation change.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

The final-form rulemaking will save provider agencies and county agencies attorney fees, since their attorneys will not have to familiarize themselves with the uncodified regulation at 7 Pa.B. 3266 and, instead, will be able to rely upon the GRAPP.

There will be no fiscal impact on the general public anticipated as a result of this regulation.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures that may be required.

There are no new costs or savings to local governments associated with compliance with this final-form regulation. No new legal, accounting or consultant procedures are required.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures that may be required.

The Department will no longer have to individually copy and mail out the regulation at 7 Pa.B. 3266 to providers, increasing efficiency through a decrease in printing and mailing costs, because the GRAPP is codified and generally available. This cost savings is approximately \$248.88 per year.

Linda S. Scherbering 6-6-2008

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community						
Local Government						
State Government	248.88	248.88	248.88	248.88	248.88	248.88
Total Savings	248.88	248.88	248.88	248.88	248.88	248.88
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.
 The cost to the state was derived by multiplying the average number of negative sanctions issued per year by the number of appeal pages in the appeal letters mailed out with each negative sanction. This was then multiplied by the printing cost per page (.045 cents per page).

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Human Services Licensing Management and Research	\$1600	\$1511	\$966	\$969

<p>(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.</p> <p>The final-form rulemaking will save provider agencies and county agencies attorney fees, since their attorneys will not have to familiarize themselves with the uncodified regulation at 7 Pa.B. 3266 and, instead, will be able to rely upon the GRAPP.</p>
<p>(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.</p> <p>Non-regulatory alternatives were not considered.</p>
<p>(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.</p> <p>There are no effective alternative regulatory schemes.</p>
<p>(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.</p> <p>There are no applicable Federal regulations governing the certification appeal process for provider agencies.</p>
<p>(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?</p> <p>A survey of four of Pennsylvania's surrounding states (Ohio, Virginia, Delaware and New Jersey) indicate that they only have one form of appeal and do not have with a special appeal process for Health and Human service providers. This regulation will not put Pennsylvania at a competitive disadvantage with other states.</p>
<p>(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.</p> <p>Yes, the rulemaking affects several chapters that are not being amended. Chapters 5200, 5210, 5300, 5310, 5320 and 6600 are all affected.</p>
<p>(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.</p> <p>The Department is not planning any public hearings or informational meetings for this regulation.</p>
<p>(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports that will be required as a result of implementation, if available.</p> <p>There will be a reduction in paperwork by eliminating copying and mailing of the uncodified regulation at 7 Pa.B. 3266.</p>
<p>(29) Please list any special provisions that have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.</p> <p>The final-form regulation applies to providers and does not directly affect the individuals served in the facilities certified by the Department.</p>

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective 30 calendar days after publication as final-form rulemaking in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The Department will evaluate the effectiveness of this regulation on an on-going basis.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

Date of Approval

Check if applicable
Copy not approved.
Objections attached.

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated
by:

DEPARTMENT OF PUBLIC WELFARE

(Agency)

LEGAL COUNSEL: [Signature]

DOCUMENT/FISCAL NOTE NO. 14-504

DATE OF ADOPTION: _____

BY: Estelle B. Richman

TITLE: SECRETARY OF PUBLIC WELFARE
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to
form and legality. Executive or
Independent Agencies

By: [Signature]
Andrew C. Clark

JUL 17 2008

Date of Approval

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney
General approval or objection
within 30 days after submission.

NOTICE OF FINAL-FORM RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF ADMINISTRATION

Repeal 7 Pa.B. 3266 Chapter 9003

Licensure/Approval Appeal Procedure

[55 Pa.Code Chapters 20, 1181, 2380, 2390
3130, 3140, 3270, 3280, 3290, 3680, 3700
6400 and 6500]

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Statutory Authority

The Department of Public Welfare (Department), by this order, adopts the regulation set forth in Annex A pursuant to the authority of 2 Pa.C.S. §§ 501-508 and 701 – 704 (relating to Administrative Agency Law) and the Public Welfare Code (code), Act of June 13, 1967, P.L. 31, No. 21, 62 P.S. Article IX and Article X , 62 P.S. §§ 901-922 and §§ 1001 – 1087.

Notice of proposed rulemaking was published at 36 Pa.B. 3539 on July 8, 2006.

Purpose of Regulation

The purpose of this final-form rulemaking is to rescind the uncodified regulation at 7 Pa.B. 3266 (November 5, 1977) titled Chapter 9003 (relating to licensure/approval appeal procedure) and to replace it with 1 Pa.Code Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP) for all facilities and agencies certified by the Department.

The final-form rulemaking is needed to update and simplify the certification appeal process in the Department. The uncodified regulation at 7 Pa.B. 3266 is unnecessary and duplicative of the GRAPP. GRAPP is appropriate for certification appeals. The Department has already begun a chapter-by-chapter replacement of the regulation at 7 Pa.B. 3266 with GRAPP at 55 Pa.Code § 3800.12 (relating to appeals) and at 55 Pa.Code § 2600.12 (relating to appeals). With regard to the GRAPP 10-day timeframe for which to appeal the actions of the staff, however, the Department, after careful consideration, has agreed to continue the 30-day appeal period as noted in Chapter

9003. This 30-day appeal period, however, will not be applied to 55 Pa.Code Chapters 2600 (relating to personal care homes) and 3800 (relating to child residential and day treatment facilities). Since those two chapters were not proposed to be amended at 36 Pa.B. 3539, amending those chapters at this time is outside the scope of this rulemaking. The Department amended § 20.82 (relating to written request for appeal) to provide that appeals under Chapters 2600 and 3800 are excluded from the 30-day appeal period exception.

Affected Individuals and Organizations

Agencies and facilities receiving certification under Chapter 20 are: Adult Training Facilities certified under Chapter 2380, Vocational Facilities certified under Chapter 2390, County Children and Youth Social Service Programs certified under Chapter 3130 and Chapter 3140, Child Day Care Centers certified under Chapter 3270, Group Child Day Care Homes certified under Chapter 3280, Family Day Care Homes certified under Chapter 3290, Private Children and Youth Social Service Agencies certified under Chapter 3680, Foster Family Care Agencies certified under Chapter 3700, Psychiatric Outpatient Clinics under Chapter 5200, Partial Hospitalization under Chapter 5210, Private Psychiatric Hospitals under Chapter 5300, Community Residential Rehabilitation Services for the Mentally Ill under Chapter 5310, Requirements for Long-Term Structured Residence Licensure under Chapter 5320, Community Homes for Individuals with Mental Retardation certified under Chapter 6400, Family Living Homes certified under Chapter 6500 and Intermediate Care Facilities for the Mentally Retarded under Chapter 6600.

Although not all of the previous chapters are being amended in this final-form rulemaking, the Department finds that the previous facilities are within the scope of Chapter 20 (relating to licensure or approval of facilities and agencies) since they are certified under Article IX and Article X of the code. See § 20.2(a). The Department is amending those chapters which specifically refer to either Chapter 9003 or Chapter 30 (which originally had been reserved for the codification of Chapter 9003). In addition, the appeal procedures for chapters 5200, 5210, 5300, 5310, 5320, and 6600 will also be subject to GRAPP under § 20.82 (relating to written request for appeal), which is being amended in this final-form rulemaking.

Accomplishments and Benefits

GRAPP is the officially codified and recognized practice and procedure for administrative agencies within the Commonwealth. There are currently unequal and differing appeal procedures within the types of facilities certified by the Department. This final-form rulemaking provides consistency in the appeal process across all department-certified human service programs. Currently, attorneys for appellants providing multiple types of human services would have to be versed in both the uncodified regulation at 7 Pa.B. 3266 and GRAPP in order to represent their clients' best interest.

The existence of a special certification appeal regulation imposes an unnecessary burden on appellants' counsel because their applicability is limited to some, but not all of the Department's certification appeals. Since most attorneys experienced in administrative law are familiar with GRAPP, but not the uncodified regulation at 7 Pa.B.

3266, considerations of efficiency and fairness to appellants imply that the consistency achieved by repeal of the regulation at 7 Pa.B. 3266 is in the public interest.

Fiscal Impact

The final-form rulemaking saves provider agencies and county agencies attorney's fees, since their attorneys will not have to familiarize themselves with the uncodified regulation at 7 Pa.B. 3266 and, instead, will be able to rely upon the GRAPP.

Upon adoption, the Department will no longer have to individually copy and mail out the regulation at 7 Pa.B. 3266 to providers, thereby, increasing efficiency through a decrease in printing and mailing costs because GRAPP is codified and generally available.

There will be no fiscal impact on the general public anticipated as a result of the adoption of this rulemaking.

Paperwork Requirements

There will be a reduction in paperwork by eliminating the printing and mailing of the uncodified regulation at 7 Pa.B. 3266.

Discussion of Comments and Major Changes

Following is a summary of the major comments received within the public comment period following publication of the proposed rulemaking and the Department's response to those comments. Comments were received from five commentators during

the public comment period and the Independent Regulatory Review Committee (IRRC). Comments received were from two County Children and Youth Agencies, one from a provider advocacy group, and two comments were from the Pennsylvania Children and Youth Administrators, Inc. A summary of major changes from proposed rulemaking is also included. The Department would like to thank the commentators for their time in reviewing the proposed rulemaking and submitting their comments and contributions.

General – Applicability

IRRC questioned whether the Department has considered codifying Chapter 9003.

Response

The Department has not considered codifying Chapter 9003 since it is archaic, and the Department finds there is no need for a specialized set of administrative appeal regulations. 1 Pa.Code Part II (GRAPP) is a sufficient, existing and generally utilized set of rules for administrative appeals. Since the publishing of the uncodified regulation at 7 Pa.B. 3266 in 1977, it has been rare for either the Bureau of Hearing and Appeals (BHA) or the parties to certification appeals to reference the uncodified regulation. Instead, the current practice is to default to GRAPP.

General – Appeal process

Two of the commentators and IRRC noted that GRAPP contains many procedures that may not be related to licensure or approval appeals. Pennsylvania Association of Resources for People with Mental Retardation (PAR) specifically commented that the uncodified regulation at 7 Pa.B. 3266 was developed for “the specific purpose of

establishing a procedure for entities ... to appeal Departmental decisions which affect the status of that Certificate of Compliance.” Continuing to employ the procedures under the uncodified regulation will continue to promote clarity, consistency and uniformity in resolving licensure issues and deciding those appeals.

PAR further commented that GRAPP’s provisions are general in nature and apply to many different types of proceedings. Therefore, the adoption of GRAPP would serve to confuse the appeals procedures, rather than clarify the procedures.

PAR also commented that Medical Assistance (MA) providers and their counsel must familiarize themselves with specific MA provider appeal regulations. If MA providers must use specific appeal procedures, providers and counsel should continue to use the specific uncodified regulations, Chapter 9003, for certification appeals.

Response

Since the publishing of it in 1977, it has been rare for either the Bureau of Hearings and Appeals (BHA) or the parties to certification appeals to reference the uncodified regulation. Instead, the current practice is to default to GRAPP in most cases. Since the current practice is to default to GRAPP, there is not a consistency and uniformity issue in regards to the resolution of licensure issues.

Using GRAPP updates and simplifies the certification appeal process in the Department since it is a sufficient, existing and generally utilized set of rules for administrative appeals.

Finally, GRAPP has applicable procedures for certification appeals. Although GRAPP may contain some provisions that might rarely, if ever, apply to these types of appeals, other general rules of practice and procedure also contain rarely utilized

provisions. Even the uncodified regulation has unintelligible and unclear provisions. See §§ 9003.13.1 (C)(3) and 9003.13.3 (relating to decision of the hearing officer; optional review by the Secretary).

General – Certification

The Department of Health requested that the Department remove all references to the word “certification” in the regulation since the certification of health care facilities is a specific term defined in Federal law and regulation. The Department of Health is the survey agency and is responsible for making certification decisions and recommendations.

Response

The term “certification” is not specific to the Department of Health or the Federal government. Further, the term “certificate of compliance” has been used by the Department since the publishing of uncodified regulation at 7 Pa.B. 3266 (November 5, 1977). Chapter 20 (relating to licensure or approval of facilities and agencies) also uses the term “certificate of compliance”. Chapter 20 has been in effect since August 19, 1985. See 15 Pa.B. 2648. Finally, neither the Annex of the proposed rulemaking at 36 Pa.B. 3539 nor the Annex of this final-form rulemaking contain the term “certification”; therefore, the recommended deletion of the term “certification” is outside the scope of this rulemaking.

General – Timeframe for appeal to be heard

Two commentators urged the Department to prescribe a 60-day timeframe for an appeal to be heard by BHA and a 30-day timeframe for an adjudication to be issued by

the Bureau. One commenter questioned how the responsiveness to appeals compare for the agencies already under GRAPP and the agencies not covered under GRAPP.

Response

The question of whether there should be any timeframes for BHA to hold a hearing and issue an adjudication is outside the scope of this rulemaking. Therefore, the Department has not prescribed any timeframes for BHA's hearing of an appeal or issuing an adjudication. Further, with rare exception, a facility is allowed to continue to operate pending the outcome of its administrative appeal. However, there may be times where special circumstances warrant a more rapid adjudication by BHA. The parties are free to seek expedited adjudication in such cases.

§35.20 (relating to appeals from action of the staff)

The commentators noted the 10-day appeal period allotted under the GRAPP is simply too short a timeframe for weighing the ramifications of an action taken by the Department and determining whether to appeal. The IRRC recommended that the Department consider preserving the 30-day appeal period currently allowed under Chapter 9003.

Response

After careful consideration, the Department has agreed to continue the 30-day appeal period as noted in Chapter 9003.

§35.20 (relating to appeals from action of the staff)

PAR and IRRC noted that the GRAPP appears to bypass BHA, as it provides that appeals of staff action be taken directly to the agency head. They questioned whether it was the Department's intent that these appeals be taken directly to the Secretary.

Response

By utilizing GRAPP, the Department does not intend to bypass BHA under §35.20 (relating to appeals from actions of the staff). Although §35.20 provides that an action may be appealed to the agency head, the Department will internally forward these appeals to BHA, as the designee of the agency head.

§3140.17 (relating to review of county plans and budgets)

One commenter expressed concern that the proposed changes do not address a primary need of counties for clarification of how and when County Children and Youth Services Agencies should appeal adverse decisions on Needs-based Plan and Budget by the Department.

Response

The reference to Chapter 30 in § 3140.17 is being deleted since the uncodified regulation never applied to appeals under Chapter 3140 (relating to planning and financial reimbursement requirements for county and children and youth social service programs). Chapter 3140 applies to the development and submission of social services plans and budget estimates and the reimbursement of expenses incurred by the county for children and youth social services. See 55 Pa.Code § 3140.1 (relating to applicability). The uncodified regulation, however, provided the licensure/approval appeal procedure for facilities certified by the Department. Therefore, this final-form

rulemaking does not change the appeal procedures under Chapter 3140. As specifically set forth at § 3140.17(e), counties may appeal under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and 275 (relating to appeal and fair hearing and administrative disqualification hearings).

Regulatory Review Act

Under § 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on the Department submitted a copy of this regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In compliance with the Regulatory Review Act the Department also provided the Committees and the IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form regulation, the Department reviewed and considered comments received from the Committees, the IRRC and the public.

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this regulation was [*deemed*] approved by the Committees on . The IRRC met on and approved the regulation.

In addition to submitting the final-form rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Order

The Department finds:

- (a) The public notice of intention to amend the administrative regulation by this Order has been given pursuant to §§ 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations at 1 Pa.Code §§ 7.1 and 7.2.

- (b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of 2 Pa.C.S. §§ 501-508 and 701 – 704 (relating to Administrative Agency Law) and of the Public Welfare Code, Act of June 13, 1967, P.L. 31, No. 21, 62 P.S. Article IX and Article X , 62 P.S. §§ 901-922 and §§ 1001 – 1087.

The Department acting pursuant to 2 Pa.C.S. §§ 501-508 and 701 – 704 (relating to Administrative Agency Law) and of the Public Welfare Code, Act of June 13, 1967, P.L. 31, No. 21, 62 P.S. Article IX and Article X , 62 P.S. §§ 901-922 and §§ 1001 – 1087 orders:

- (a) The regulation of the Department is amended to read as set forth in Annex A of this Order.

- (b) The Secretary of the Department shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect 30 days after final publication in the Pennsylvania Bulletin.

Annex A

TITLE 55. PUBLIC WELFARE

PART I. DEPARTMENT OF PUBLIC WELFARE

Subpart C. LICENSING/APPROVAL

CHAPTER 20. LICENSURE OR APPROVAL OF FACILITIES AND AGENCIES

GENERAL PROVISIONS

§ 20.2. Applicability

* * * * *

(b) This chapter does not apply to family day care homes that are registered under the authority of Article X of the Public Welfare Code [(62 P. S. §§ 1001--1080), except for appeals as provided in § 20.82 (relating to written request for appeal)).

* * * * *

APPEALS

§ 20.82. Written request for appeal.

(A) The legal entity may appeal a Departmental decision specified in § 20.81 (relating to decisions that may be appealed) under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and [§ 9003 of the DPW Manual to be codified at Chapter 30 (relating to licensure or approval appeal procedures)] 1 Pa.Code Part II (relating to General Rules of Administrative Practice and Procedure).

(B) EXCEPT FOR FACILITIES LICENSED OR APPROVED UNDER CHAPTERS 2600 AND 3800 (RELATING TO PERSONAL CARE HOMES AND CHILD RESIDENTIAL AND DAY TREATMENT FACILITIES), THE LEGAL ENTITY MAY APPEAL BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

(C) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1181. NURSING FACILITY CARE

Subchapter D. NURSING HOME REFORM--STATEMENT OF POLICY

APPEALS OF ADVERSE DETERMINATIONS

§ 1181.561. Process to appeal adverse determinations in the preadmission screening program.

* * * * *

[(e) The Department is planning to recodify its regulations to consolidate all regulations with respect to hearings and appeals in a new Chapter 30 (relating to licensure or approval appeal procedures). The appeals process for adverse determinations in the OBRA-87 preadmission screening process will be consolidated as part of that recodification. In the meantime, while the sources of hearing authority may be different for Program beneficiaries and others, the

Department will administer the appeals process for both groups using the procedural model in Chapter 275 to assure uniformity and expedite the adjudications.]

**APPENDIX N. RIGHT TO APPEAL AND
FAIR HEARING**

* * * * *

II. STATE APPEALS PROCESS FOR TRANSFERS AND DISCHARGES

* * * * *

[The Department is planning to recodify its regulations to consolidate all regulations with respect to hearings and appeals in 55 Pa. Code Chapter 30. In the meantime, while the sources of hearing authority may be different for Program beneficiaries and others, the Department shall administer the appeals process for both groups using the procedural model in Chapter 275, in order to assure uniformity and expedite the adjudications.]

* * * * *

PART IV. ADULT SERVICES MANUAL

Subpart D. NONRESIDENTIAL AGENCIES/FACILITIES/SERVICES

CHAPTER 2380. ADULT TRAINING FACILITIES

GENERAL REQUIREMENTS

§ 2380.12. Appeals.

(A) Appeals related to the Department's approval or licensure shall be made in accordance with 2 Pa.C.S. §§ 501--508 and 701--704 (relating to the Administrative Agency Law) and [Chapter 9003 of the Department of Public

Welfare's Manual (relating to Licensure/Approval Appeal Procedure), published at 7 Pa.B. 3267 (November 5, 1977), to be codified at Chapter 30] 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(B) APPEALS RELATED TO THE DEPARTMENT'S APPROVAL OR LICENSURE SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

(C) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

CHAPTER 2390. VOCATIONAL FACILITIES

GENERAL REQUIREMENTS

§ 2390.12. Appeals.

(A) Appeals related to the Department's approval or licensure shall be made under 2 Pa.C.S. §§ 501--508 and 701--704 (relating to Administrative Agency Law) and [Chapter 9003 of the Public Welfare Manual published at 7 Pa.B. 3264 (November 5, 1977) to be codified at Chapter 30 (relating to licensure or approval appeal procedures)] 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(B) APPEALS RELATED TO THE DEPARTMENT'S APPROVAL OR LICENSURE SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

(C) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

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PART V. CHILDREN, YOUTH AND FAMILIES MANUAL

Subpart C. ADMINISTRATION AND FISCAL MANAGEMENT

ARTICLE II. COUNTY-ADMINISTERED SERVICES

CHAPTER 3130. ADMINISTRATION OF COUNTY CHILDREN AND YOUTH SOCIAL SERVICE PROGRAMS

REQUIREMENTS FOR FOSTER CARE PROGRAMS AND CHILD CARE FACILITIES OPERATED BY A COUNTY AGENCY

§ 3130.82. Appeals.

(A) [(a)] The county agency has the right to appeal the Department's decisions related to licensure or approval under [Chapter 9003 of the Public Welfare Manual published at 7 Pa.B. 3264 (November 5, 1977) to be codified at Chapter 30 (relating to licensure or approval appeal procedures)] 2 Pa.C.S. §§ 501--508 and 701--704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

[(b)] To appeal the Department's decision, the county agency shall file a written appeal with the Director, Office of Hearings and Appeals, Department of Public Welfare, Post Office Box 2675, Harrisburg, Pennsylvania 17105.

(c) The appeal shall be postmarked no later than 30 calendar days following the date of notice regarding the agency's licensure or approval status.]

(B) APPEALS RELATED TO THE DEPARTMENT'S APPROVAL OR LICENSURE SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

(C) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

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**CHAPTER 3140. PLANNING AND FINANCIAL REIMBURSEMENT
REQUIREMENTS FOR COUNTY CHILDREN AND YOUTH SOCIAL SERVICE
PROGRAMS**

Subchapter A. PRELIMINARY PROVISIONS

PLAN REQUIREMENTS

§ 3140.17. Review of county plans and budgets.

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(e) The county may appeal the Department's determination reached in accordance with subsection (c) under 2 Pa.C.S. §§ 501--508 and 701--704 (relating to Administrative Agency Law) and [Chapters 30 and] Chapter 275 (relating to [appeal and fair hearing; and] appeal and fair hearing and administrative disqualification hearings).

Subpart D. NONRESIDENTIAL AGENCIES, FACILITIES AND SERVICES

ARTICLE I. LICENSING/APPROVAL

CHAPTER 3270. CHILD DAY CARE CENTERS

GENERAL REQUIREMENTS

§ 3270.12. Appeals.

(a) Appeals related to the Department's approval or licensure decisions shall be made under [Chapter 9003 of the Public Welfare Manual published at 7 Pa.B. 3264 (November 5, 1977) to be codified at Chapter 30 (relating to licensure/approval/appeal procedures)] 2 Pa.C.S. §§ 501--508 and 701--704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(B) APPEALS RELATED TO THE DEPARTMENT'S APPROVAL OR LICENSURE SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

(b) (C) An operator may appeal a Departmental decision relating to the status of a certificate of compliance of a facility owned or operated by the legal entity.

(e) (D) The Department will include information relative to appeal procedures when notifying operators of one or more of the following decisions:

- (1) The denial of a certificate of compliance.
- (2) The nonrenewal of a certificate of compliance.
- (3) The revocation of a certificate of compliance.
- (4) The issuance of a provisional certificate of compliance.
- (5) The establishment of a period for which a provisional certificate of compliance is issued.

- (6) The reduction of the maximum facility capacity.
 - (7) The denial of an increase in facility capacity.
 - (8) The limiting or precluding admission of persons into the facility.
- (E) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

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CHAPTER 3280. GROUP CHILD DAY CARE HOMES

GENERAL REQUIREMENTS

§ 3280.12. Appeals.

(a) Appeals related to the Department's approval or licensure decisions shall be made under [Chapter 9003 of the Public Welfare Manual published at 7 Pa.B. 3264 (November 5, 1977) to be codified at Chapter 30 (relating to the licensure/approval/appeal procedures)] 2 Pa.C.S. §§ 501--508 and 701--704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(B) APPEALS RELATED TO THE DEPARTMENT'S APPROVAL OR LICENSURE SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

~~(b)~~ (C) An operator may appeal a Departmental decision relating to the status of a certificate of compliance of a facility owned or operated by the legal entity.

~~(e)~~ (D) The Department will include information relative to appeal procedures

when notifying operators of one or more of the following decisions:

- (1) The denial of a certificate of compliance.
- (2) The nonrenewal of a certificate of compliance.
- (3) The revocation of a certificate of compliance.
- (4) The issuance of a provisional certificate of compliance.
- (5) The establishment of a period for which a provisional certificate of compliance is issued.
- (6) The reduction of the maximum facility capacity.
- (7) The denial of an increase in facility capacity.
- (8) The limiting or precluding admission of persons into the facility.

(E) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

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CHAPTER 3290. FAMILY CHILD DAY CARE HOMES

GENERAL REQUIREMENTS

§ 3290.13. Appeals.

(a) Appeals related to the Department's registration decisions shall be made under [Chapter 9003 of the Public Welfare Manual published at 7 Pa.B. 3264 (November 5, 1977) to be codified at Chapter 30 (relating to licensure or approval appeal procedures)] 2 Pa.C.S. §§ 501--508 and 701--704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(B) APPEALS RELATED TO THE DEPARTMENT'S APPROVAL OR LICENSURE SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

~~(b)~~ (C) A facility's operator may appeal a Departmental decision relating to the status of the facility's certificate of registration.

~~(e)~~ (D) The Department will include information relative to appeal procedures when notifying operators of one or more of the following decisions:

- (1) Denial of a certificate of registration.
- (2) Failure to renew a certificate of registration.
- (3) Revocation of a certificate of registration.
- (4) Limiting or precluding admission of persons into the facility.

(E) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

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Subpart E. RESIDENTIAL AGENCIES, FACILITIES AND SERVICES

ARTICLE I. LICENSING/APPROVAL

**CHAPTER 3680. ADMINISTRATION OF PRIVATE CHILDREN AND YOUTH
SOCIAL SERVICES AGENCY**

GENERAL RESPONSIBILITIES OF THE LEGAL ENTITY

§ 3680.14. Appeals.

(a) The legal entity has the right to appeal the Department's decisions related to licensure or approval under [Chapter 9003 of the Public Welfare Manual published at 7 Pa.B. 3264 (November 5, 1977) to be codified at Chapter 30 (relating to licensure or approval appeal procedures)] 2 Pa.C.S. §§ 501--508 and 701--704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(B) APPEALS RELATED TO THE DEPARTMENT'S APPROVAL OR LICENSURE SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

~~(b)~~ (C) The legal entity shall begin the appeal process by filing a written appeal with the Director, Office of Hearings and Appeals, Department of Public Welfare, Post Office Box 2675, Harrisburg, Pennsylvania 17105.

~~(e)~~ (D) The appeal shall be postmarked no later than 30 calendar days following the date of notice regarding the agency's licensure or approval status.

(E) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

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CHAPTER 3700. FOSTER FAMILY CARE AGENCY

REQUIREMENTS FOR FFCA APPROVAL OF FOSTER FAMILIES

§ 3700.72. Foster family approval appeals.

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(b) Foster parents who wish to appeal an FFCA decision to disapprove or provisionally approve the foster family shall submit to the FFCA a written appeal [postmarked no later than 15 calendar days from the date of the written notice]. The appeals are subject to [Title 9003 of the DPW Manual to be codified at Chapter 30 (relating to licensure or approval appeal procedures)] 2 Pa.C.S. §§ 501--508 and 701--704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(C) APPEALS RELATED TO THE DEPARTMENT'S APPROVAL SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

~~(e)~~ (D) Upon receipt of the foster parent appeal, the FFCA shall date stamp the appeal. The FFCA shall review the appeal and determine if steps can be taken to resolve the appeal without a hearing. If, after considering the appeal, the FFCA is unable to resolve issues of disagreement, the appeal shall be sent to the Office of Hearings and Appeals, Post Office Box 2675, Harrisburg, Pennsylvania 17105 within 15 calendar days of the date stamp.

(E) SUBSECTION (C) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

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PART VIII. MENTAL RETARDATION MANUAL

Subpart E. RESIDENTIAL AGENCIES/FACILITIES/SERVICES

ARTICLE I. LICENSING/APPROVAL

**CHAPTER 6400. COMMUNITY HOMES FOR INDIVIDUALS WITH MENTAL
RETARDATION**

GENERAL REQUIREMENTS

§ 6400.12. Appeals.

(A) Appeals related to the Department's licensure shall be made in accordance with 2 Pa.C.S. §§ 501--508 and 701--704 (relating to the Administrative Agency Law) and [Chapter 9003 of the Public Welfare Manual published at 7 Pa.B. 3264 (November 5, 1977) to be codified at Chapter 30 (relating to licensure or approval appeal procedures)] 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(B) APPEALS RELATED TO THE DEPARTMENT'S LICENSURE SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

(C) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

CHAPTER 6500. FAMILY LIVING HOMES

GENERAL REQUIREMENTS

§ 6500.13. Appeals.

(A) Appeals related to the Department's licensure or waiver decisions shall be made in accordance with 2 Pa.C.S. §§ 501--508 and 701--704 (relating to the Administrative Agency Law) and [Chapter 9003 of the Public Welfare Manual published at 7 Pa.B. 3264 (November 5, 1977) to be codified at Chapter 30 (relating to licensure or approval appeal procedures)] 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(B) APPEALS RELATED TO THE DEPARTMENT'S LICENSURE OR WAIVER DECISIONS SHALL BE MADE BY FILING A PETITION WITHIN 30 DAYS AFTER SERVICE OF NOTICE OF THE ACTION.

(C) SUBSECTION (B) SUPERSEDES THE APPEAL PERIOD OF 1 PA.CODE § 35.20 (RELATING TO APPEALS FROM ACTIONS OF THE STAFF).

Public Commentators
14-504, Licensure/Approval Appeal Procedure

<u>Name</u>	<u>Organization</u>	<u>Address</u>
Shirley A. Walker	Pennsylvania Association of Resources for People with Mental Retardation	1007 N. Front St., Harrisburg, PA 17102
Charles R. Songer, Jr.	Pennsylvania Children and Youth Administrators, Inc.	17 N. Front St., Harrisburg, PA 17101
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James L. Forsynthe	Chester County Department of Children, Youth and Families	601 Westtown Rd, Ste. 310 West Chester, PA 19380-0990
Terry L. Watson	County of Centre, Children and Youth Services	Willowbank Office Bldg. 420 Holmes Street Bellefonte, PA 16823-1488

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 14-504
 SUBJECT: LICENSURE/APPROVAL APPEAL PROCEDURE
 AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2008 JUL 21 PM 1:00
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
X 7/21/08	<i>Nancy Allen</i>	HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
X	<i>Frank L. Omer</i> 7/21/08	MAJORITY CHAIRMAN <u>Frank L Omer</u>
X	<i>Edwin B. Erickson</i> 7/21/08	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
X 7-21-08	<i>Linda Kullman</i>	MAJORITY CHAIRMAN <u>Edwin B. Erickson</u>
7-21-08	<i>Cheryl John</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)